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THE NATURE AND OFFICE

OF

THE STATE.

BY

ANDREW COVENTRY DICK.

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PREFACE.

THE following Treatise was composed some years ago, and is published at this time in consequence of recent events having given a fresh interest to the subject which it discusses. But as the writer has seen no reason to alter the views he had long before adopted, he has printed the work nearly as it was originally written, with the exception of a few paragraphs which were recently added.

This is stated in order to explain why it is that in a work on such a subject the reader will find very slight reference made to the many striking occurrences which have marked this year, and the interesting questions to which they have given rise.

Perhaps an explanation is also required why certain of the subjects introduced in the course of the discussion receive a consideration very inadequate to their intrinsic importance. The reason will be found in the purpose for which they were introduced, which

was not to discuss them, but simply to show that the relation in which they stand to the State harmonized with the writer's theory of its nature and office. And as it seemed possible to do this by taking a very general notice of the matters referred to, no more has been attempted.

It will be seen that the writer has confined his view exclusively to the internal construction and action of States. But he might with great advantage have made it embrace their external relations and operations. And he persuades himself, that whoever may survey the sphere where Nations are the actors, and of which the principles and rules are embodied in the code of International Law, will find that the doctrines he has ventured to propound are not only consonant with all the phenomena, but supply a most natural and satisfactory interpretation of them.

THE NATURE AND OFFICE OF THE STATE.

CHAPTER I.

PRELIMINARY OBSERVATIONS.

The State a permanent moral Institute.—Its province and laws deducible from its end.—Opinions respecting its end.—Its end not human good in general.—Nor all social good.—The Political one of several natural Societies.—The State distinct from Society in general.

In every philosophical enquiry into the nature of the body politic, it is assumed, that that concourse of men which we term a Nation, or People, is not a transitory and changeable league, but a stable society, having a fixed moral sphere and ascertainable laws. Upon any other supposition, the enquiry would be manifestly idle, since none of those general propositions which constitute philosophical knowledge, could ever be laid down respecting bodies politic, if they had no settled rule or province, but were dependent for their order, object, and laws, upon the accidental circumstances in which each arose, or the arbitrary will of its framers. Even in that case, indeed, philosophy might have something to say regarding them;

but it would be simply to announce that nothing could be known; that there was in truth no science of Politics, no right or wrong in that great sphere of human action; and that men were bound to accept all political constitutions as lawful, however barbarous, disorderly, and mischievous they might be, and however discordant and diverse from one another.

Any such conclusion, however, is surely unreasonable. On the contrary, we are bound to believe that there is an immutable idea or form of political society, which reason may discover, and towards the realization of which men may be seen steadily advancing in every improving era. There is a *lex legum* in the political as in the rest of the moral world, a law which is the standard of excellence. No reasoner upon politics, or, indeed, upon any subject of morals, but assumes the existence, *in rerum natura*, of such a primordial and governing model. Men may differ, and they have differed widely respecting its exact form and features; and politicians may defend as conformable to it, political institutions and laws of the most varied and discordant characters. But such differences of opinion only prove that their knowledge is yet imperfect; while their disputatious attempts to convert one another to their respective beliefs, are clear evidence of a common persuasion, that there is one form of political society which is truly perfect; which is cognizable by enlightened reason; and which carries in it a title and a power to bind everywhere the conscience. Upon no other footing, indeed, could they be heard to reason; for on none other is reasoning possible; the sole alter-

native being the humbling, and disastrous conclusion, that bodies politic are things irrational and lawless, the creatures of a sort of accidental fatality, with which the philosopher has nothing to do, except perhaps the task of reconciling men to a patient endurance of that form under which they have separately fallen.

I have premised these observations respecting the existence of a moral or philosophical standard of political society, which may be different from, and is superior to the actual constitution and law of any particular State, for the purpose of indicating at the outset, the nature of the following discussion; which will be directed towards establishing the laws of political society upon a basis of permanent and universal reasons, in opposition to the foundations, whether of old custom, or of the mere will and convention of men, few or many, upon which they have hitherto commonly rested, and with which, as a sufficient ground and warrant for them, men have too generally been contented. There is, I am aware, a class of persons (very numerous in this country) who deprecate earnestly the notion of a difference in politics, between what actually is, and what ought to be law; and who would teach us to look upon that most true and salutary distinction as a false and dangerous dogma; partly prompted by their personal interests, which are dependent upon existing institutions, and would be benefited by the same unqualified moral sanction being annexed to them, which undeniably hallows the political ordinance in general; and partly blinded by the tendency of the human intellect to reduce its abstract ideas of moral

things to the dimensions and shape of the living examples with which it is familiar. But till this error is renounced, and men's minds are elevated to the habitual contemplation of political law in its state of native purity, rather than in its usual clothing of statutes, customs, and precedents, society must have but an imperfect security against many evils; and especially against the master evil of tyranny. Not even those popular forms of government, which seem to many to be identical with liberty, will much avail to ward it off; for although they may avert the proper mischiefs that flow from the supremacy of a single will, yet if the people, in whom they vest supreme power, are brought up in the belief of the grand doctrine of tyrants, that the will of the ruler is the standard of political right, we may expect to see, under them, an administration as immoral and as oppressive, though not, it may be, by the same kind of miseries, as that of the wickedest single despot.

The course generally taken by scientific enquirers into the province and laws of the State or body politic, has been to lay down what is its end or object, and from thence to infer what are its powers and duties. They have followed this course upon the principle (which when candidly interpreted must be allowed to be sound,) that if the end is lawful and dutiful, so are the means necessary to obtain it.[1]

[1] "Posito enim fine," says Grotius, "simul ponitur jus ad ea, sine quibus finis obtineri non potest." *De imperio Summ: potestatum circa sacra*, cap. i. To the same effect Puffendorf lays down "officia fluunt ex fine."

The point of moment with them, therefore, has always been, to define with accuracy the end of political society. And here, as might be expected, there have been much disagreement and frequent errors. Predisposed to adopt or reject particular institutions, men have shaped their theories by their likings; and have arbitrarily imagined a variety of fictitious ends, that they might justify or condemn whatever set of means pleased or offended their interest or prejudices.

Without presuming to review or decide upon the various theories, I may mention generally, that they seem to be divisible into the two great classes of those which assign to the State a universal, and those which assign to it a limited end or object. Among the former may be enumerated the theory of Aristotle, which defines the object of Government to be the "well-being" in general of man; of Paley, who states it to be the "public good or welfare;" and of Bentham, who describes it as the "greatest happiness of the greatest number." Among the latter, we may rank the theories of Locke, of Warburton, and others, including some distinguished continental jurists, who vary in their phraseology, some describing the end of the State as civil utility, others as "security for life, liberty, and property," others as "civil peace," others as "security against injury;" but all agreeing to mark a bounded, in contradistinction to the apparently universal jurisdiction over human affairs, assigned to political society by the terms of the other theory.

Respecting that other theory it is obvious to re-

mark, that its account of the end of the State, is in one sense undoubtedly true. The "well-being" or "happiness" of man may be justly said to be the end of political society. But the same thing is true of all individual men, and of all their separate powers and endowments; and more especially of all the combinations and relations into which one man can enter with other men. This is indeed one chief end of human existence in every form. But it is not the peculiar and specific end of political society, being, on the contrary, shared with it by every other species of human association. It therefore throws no light upon the nature and functions of one, more than upon those of any other; and the definition though true, is unscientific and useless. Even from this limited praise, however, we must except the form in which it has been stated by Mr. Bentham, which is pregnant with error. It seems to take the element of numbers into the calculation of what is morally right, than which nothing can be more alien to the nature of morality, or would tend more to debase and adulterate it. Mr. Bentham would have come nearer to the truth, had he adhered more closely to the author from whom, probably, he took his celebrated definition, and who gives to the greatest happiness of the greatest number its proper place, of being the practical sign or evidence that a government is good, instead of raising it to be the peculiar final end of the institute itself. "There is then the most infallible proof of good government," says the author of a singularly able Treatise on the Polity and Legislation of the Romans, "when the greatest sum

of happiness is divided among the greatest number of persons."[1]

In ascribing so comprehensive an end to the body politic, as the "well-being" of man, or his perfection or happiness in general, the ancient theorists seem to have been inspired by a more rational and consistent philosophy, than their followers among the moderns. To this idea of it, the Grecian philosophers were led by the experience of their political world. The smallness of the states composing their political system, and their active rivalry with each other, engendered in their members an intense spirit of civism, which made each man regard his State as a sort of impersonation of himself. Its security, independence, and glory, were near to his personal interests, and ever present to his mind; they could be maintained only by his constant personal care; and while engaged in this labour, he was discharging the highest function of a man. In their estimation the State was every thing, the Individual nothing; and hence the whole Public Polity was to be directed to the single end, of bringing each citizen into the highest condition of fitness for the public service. In order, therefore, that not one particle of the power and energy

[1] "La signe infaillible d'un bon Gouvernement, c'est la plus grande somme de bonheur divisée entre le plus grand nombre d'hommes." *Essai sur la Politique et la Législation des Romains*, page 179. I quote from what professes to be a translation into French, of an Italian work published anonymously in 1772. The translation, which is printed at Paris, in the Third year of the Republic, states that the work was attributed to various eminent Italians, and among others to Beccaria.

of any one individual, might run to waste, or be diverted, it was held to be the concern of the law, first, to devise the model of a perfect citizen, and next, by a system of discipline, to mould, or rather to distort, into agreement with it, the characters of all its members. For this purpose, the public discipline was to embrace the whole life of a man, from his infancy up to his mature age, and all his conditions and relations, whether domestic, social, religious, industrial, or political. He was to be ever the servant, or rather instrument, and slave of the State, neither retaining any personal independence, nor owning any separate or even intermediate authority; and reaping as the sole but sufficient reward of this abnegation of personality and freedom, the applause of his compatriots, and the public renown of his state. We may gain some insight into the principle, from the example of the Spartan Republic, which is well known to have been the admiration of Grecian political philosophy. In that strange community, a man was begotten, born and suckled; he ate, drank, dressed; he thought, spoke, walked, worked, fought, diverted himself, loved, married, worshipped—learned, in short, every thing he knew, and executed every thing he did, according to a political rule, the single aim of which was to make each citizen a fit instrument for public purposes. Living in a political system which induced this stern subjugation of all persons and things, to the one great authority of the State, and where the Spartan people, among whom the subjugation was most thorough and firm, long bore away the palm of civic glory from all competitors, it is not wonderful, that the Grecian

philosophers should have formed very exalted conceptions of the rights and functions of the body politic. They held, accordingly, that the political was the perfect condition of man; not only crowning all others, and including all as the whole includes the parts; but in a manner extinguishing or superseding every other, so that a man, when he entered into it, seems to have ceased, in their view, to retain any personality, or at least any independent rights as an individual, or any independent relations, either domestic or social, with other men; but to have become in every thing, a mere limb or member of the State, bound to take from the public will, the order of his whole life. With such experience and such ideas, it was natural that in their speculations they should assign the highest possible function to the political society, and hold it to embrace in its design nothing short of the whole "well-being" of man.

We must conclude that there is something plausible and seductive in systems which endue political authority with a supereminent and absolute jurisdiction over the whole life of its subjects, when we observe how extensively they have prevailed in the world. The polities under which the greater part of the East was anciently governed, seem to have been of this kind; for in them, not only that which in our days would be termed public affairs, and public institutions, but also the private life and manners of their subjects, their rank, their condition, mode of life, and daily occupations, seem all to have been fixed by the law. This was done by various devices, and more especially through the influence

of religion, and by the system of castes, the sole instrument by which any such rule could be set up or maintained throughout an extensive dominion. The difference, in a philosophic view, between these polities and that which Greece admired, may perhaps be reduced to a difference in the opinion entertained by the founders of the one and the other, concerning the public interest, toward the furtherance of which the laws ought to be directed. In the East men preferred a religious interest; in Greece a secular. The Eastern polities were theocracies; those of Greece were civil societies. Josephus has somewhere in his works noticed the analogy, and, at the same time, hit the point of difference, when speaking of the polity of Moses, (the most thorough, and yet, so to speak, the most civil and free of all theocracies,) he observes, that while other lawgivers (meaning the Grecian) framed their laws on the principle that religion was a part merely of civic virtue, Moses held all the virtues to be parts of religion.

But, if we consult experience, we shall perceive, that the universal and intimate control of the conduct of its subjects, which this principle makes the business of the State, is incompatible with change, and so is incompatible with the true function of a man, which is to grow in civilization. The condition of every people who are under such a rule, must be a stationary one; as it is very evident, that a change cannot take place by individual will, for thereby the subjects might escape from the public rule; and cannot be made by the State itself, for implying, as

it would do, previous error or imperfection, it would be at variance with the necessary pretensions of the system to infallibility, and would strike at the root of its authority. Add to this, that, even if otherwise unobjectionable, the extreme practical difficulty of getting a whole people to adopt a change with the necessary simultaneousness and unanimity, would of itself prevent the attempt. Whenever, accordingly, room is to be made for the advance of society, the public authority must retire within a narrowed jurisdiction, giving up for its impracticability, if for no better reason, the office of presiding over the whole life of its subjects. The progress of such a restriction of its superintendence is, not indeed exemplified, but indicated, in the history of the Roman Republic. In its earlier ages, the public laws and customs partook of the educational character of the Lycurgan and theocratic polity. But as the Republic extended its territory, and brought under its dominion various tribes and nations, each having its own notions, manners, and laws, the Roman legislators rose, in their ideas, to a clear conception of the true rule of civil life; of which the fundamental principle is, the personal liberty of man. Thence within the bosom of that Republic, was founded and built up that grand monument of human wisdom, the civil law, which, moulding itself by the standard of universal reason and equity, provided in its letter, and most probably secured in fact, a large measure of civil liberty to its subjects, of security in the possession and freedom in the use of property, as well as of freedom of industry and

enterprise. Ostensibly, indeed, this law or rule of life still bore the appearance of State superintendence, inasmuch as it proceeded from the State as its author. But when examined it was apparent that the State had, in its turn, taken it, in its great outlines, from the higher source of reason, and general expedience, and that its real effect was to leave each individual man his own master within a certain wide sphere, and to give ample room for the spontaneous and undirected growth of nearly every kind and variety of civilization. It is true, indeed, that this law was no protection against the despotism of the public authorities themselves, who frequently gratified their own caprices by mere military execution. But these violations of the ordinary immunities of the subject, were like local and passing storms in a wide and serene sky. The only department within which, in regular times, the Government continued really to order all things by its direct and immediate will, exercising a true personal dominion and scrutiny, was that of public affairs, including religion, which, from its being the cause of great public movements, rulers have always liked to retain in their power. Even religion itself was, in the progress of time, disjoined in some measure from the imperial authority, by the rise within the Empire of the Christian community; which, carrying into the West the ideas indigenous to the Eastern mind, of the supremacy of religion over every other human interest, prepared the way for the release of it also from the grasp of the State. It even went farther, and threatened for a time to establish over the Western world, a

species of theocracy like that to which the East was familiar. But many circumstances none of the least being a certain resistant influence in the spirit and institutions of the religion which was thus sought to be abused by its professors, prevented this catastrophe, and limited the result to the establishment of a distinction (more obvious, however, in theory than observed in practice) between the ecclesiastical and civil provinces, and a restriction of the authority of the State in matters of religion.

It appears, then, that if we would be instructed by the course of nature, and make our account of her laws, statements of facts, rather than of our own likings and fancies, we must hold the end or object, peculiar to political society, to be somewhat less extensive than the whole good, welfare, or happiness of its subjects. We must assign to it a limited and distinctive sphere of good; or rather, we must confine it to the use of one or more specific means of attaining good. We must adhere to the creed of Locke, rather than of Aristotle.

The upholders of that more limited theory, which alone is compatible with the experience of modern times, have generally started, in their explanations of it, from the assumption or the supposition that man's first and natural condition is that of isolation; and that while in that condition he is morally, as well as actually, his own absolute master. From this they have inferred, that he comes into society, or the political state, by an act of absolute freedom; whereby he resigns to the social union a portion (as Locke supposed), or the whole (as Hobbes imagined), of his

individual dominion and liberty, for the purpose, in the first place, of avoiding the ills to which isolation exposed him, and, in the next place, of attaining the good which co-operation only can procure.

According to this view, the end of the body politic would seem to include the whole good that flows from society.[1] I am inclined to question this theory both in its foundation and its result. When a great authority[2] on political history informs us, that "man was created free and independent," it seems to me that he utters what is consistent neither with historical, nor with moral truth. That, in point of fact, men ever were in a condition of individual liberty, there is no evidence; and in point of right, men certainly were never entitled to such independence, or to freedom from the wholesome bondage of society. That is manifestly the truly natural, or at least, the only rightful condition of a man, wherein his powers and endowments are most fully developed, and the whole laws of his nature are in operation. Into this condition, if he is not there already, man is bound to hasten; nor can he pretend to the right of living in a state of imperfection and mutilation. But it is evident, that nowhere is the human being that full-grown creature which he is designed to be, except in society. He is made for society. His good lies in it, and through it. And he can have no right to remain out of it, not only because the laws of his

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[1] Locke, indeed, limited it to temporal good, excluding religious, as not having its fruition in this world.

[2] Goguet. *Origin of Laws*, part i., book i.

nature drive him into it, as his proper condition, but also because by his capacities and by his position on this earth, he stands in a relation to his fellow-men which gives them a title to demand his co-operation with them, and to compel him to come in. These are doctrines which not only flow directly from the same sources in reason and experience, from which we derive our whole code of moral rights and duties, but which are necessary to explain and reconcile with justice, the great phenomena in political morality; to explain for instance, how it is that municipal laws (when in their matter morally lawful) may be justly enforced against those who never assented to them, whether as having been ignorant of them, or as having had no share in their enactment, or as having dissented from them; to tell how a man may be, unconsciously and without his will, born into allegiance and subjection to a state; and to justify that sovereign prerogative of rule, and paramount right to be upheld in independence and security, which are universally arrogated by governments.

There are, however, other objections to this opinion. It either is insufficient, as giving no reason for that specific form of society, termed the body politic;[1] or it is erroneous in representing the body politic as the just opposite and the sole antagonist of the supposed state of isolation, and political authority as the cure for all the ills and defects of individual independence.

[1] Non statim ex socialitate hominis inferri potest ejus indolem praecise *ad societatem civilem* ferri. *Puffendorf de officio hominis*, lib. ii., cap. 5.

In this latter view, which is that of its propounders, it leads to the inference that the State has for its object, the whole social well-being of its subjects. This theory, I am aware, is not dependent upon the opinion in question, but is adopted perhaps on more rational grounds, by persons who reject it.[1] Respecting it I would observe, that it is a little less objectionable than the doctrine formerly considered, but only a little; for although it exempts man from political control, in matters which, so to speak, terminate within himself, and show themselves by no outward relations, it yet subjects him to such jurisdiction and regulation in all that requires union and co-operation with others. Tracing all such unions to the political state, as their creator as well as their protector, it places them all under its superintendence and allegiance. I persuade myself that this is erroneous; and that upon due examination and just discrimina-

[1] Thus, in a recent publication of great value, it is said that the State has for its "legitimate objects, all those things that are necessary or highly important for man, and which he nevertheless—1, cannot obtain singly; 2, ought not to obtain singly, (because he exposes himself or his fellow-citizens by doing so, to great danger, for instance, by redressing privately interferences with his rights;) 3, will not do singly, (because burthensome, *disagreeable*, &c., *e. g.* to keep roads in good order, establish common schools, pay what we owe.) Thus, life is absolutely necessary for man; and if he cannot possibly obtain medical assistance, society," meaning thereby the State, "is bound to furnish it." *Lieber's Manual of Political Ethics*, p. 183. His theory is, that the State is society organized on, and according to, its jural relations, that is, relations of right; and with him the term, *right*, has a very wide meaning, being apparently synonymous with *whatever is essential to the well-being of man.*

tion between one thing and another, it will appear, that there are various forms of human association, some of them larger, some more limited than the particular form of political society, but each of them independent upon it and upon any other, relating to a separate subject-matter, and having a separate end or object; and that although all of them are connected with and affect each other, because all of them respect the same being—namely Man, yet there is truly no better reason for saying, that they are subordinate to, or spring out of political society, than for saying that it is subordinate to, or springs out of them. My meaning will appear when I instance, *first*, the great society of the Human Race, of which every man is a member, and as such, is bound by many obligations, and clothed with many rights; *next*, the religious or ethical society, that is, the Church; and *lastly*, the domestic society, or the Family, not to mention a variety of minor and more transitory unions. To the eye of reason there is surely discernible a basis for each of these, distinct from the political institute. And as a sound historical knowledge teaches us to deny that political society was, in point of fact, the first form of the social condition, and the producer of all other forms, so does a sound philosophy instruct us, that the political has no claim to take rank in morals as the creative and germinative principle of Society; but, on the contrary, that the various social unions just mentioned, result as directly from, and rest as immediately as the State itself does, upon the basis of all society, which is the sociable constitution of man. It may be that apart from the State, those other associations would be but

imperfect; but so also would it be in their absence. It may be also that all of them fall for certain effects, under its cognizance; but so equally does it under theirs. In the adjustment of human society, each stands upon an equal footing of moral right, and has an equal claim to have its interests regarded. The domestic society is not to assume powers and functions inconsistent with the political; and as little is the political to encroach upon the domestic. Neither of them, again, is to infringe upon the Church; and so on, round the whole circle, each being developed on a principle of harmony and of respect to the rest. Such would seem to be the just view of human society. It is, so to speak, one great family including a congeries of associations, of which the body politic is one. This is a truth of great moment; and I cannot help believing that very many errors of political speculatists have arisen from their overlooking this grand distinction between Society and the political body.

"There are," says Montesquieu in the first chapter of his twenty-sixth book, "different kinds of laws, and the height of human wisdom consists in knowing under which kind those matters fall, concerning which we have to legislate, so that no confusion may be made of the principles which ought to govern mankind." I wish to adopt these views; and perceiving the political to be a distinct and limited condition of human life, I would endeavour, in conformity with them, to discover what are the matters or things properly belonging to it, and what the laws whereby they ought to be ordered. This accordingly is the object of the ensuing inquiry.

CHAPTER II.

THE SUBJECT-MATTER OF THE POLITICAL UNION.

The State has a relation to Territory.—Nature of it.—The State a Territorial Proprietor.—The State has a relation to Coercive bodily force.—Extent and nature of it.—The State a Coercive Society.—Necessary connexion between its Territorial and Coercive relations.—The Coercive, its chief and ruling function.—Territory and Coercive physical force, the whole subject-matter of the Political Society.—End of the State.

THE general result of our Preliminary Observations was, that the accounts given by many political philosophers of the end of the body politic, are somewhat unsatisfactory. In general they seem to have extended its province unduly, confounding it with the superior and far more comprehensive institute of Society. Hence, they have included among the matters which fall under its jurisdiction, and are to be ordered by its laws, nearly every thing in which mankind as sociable have an interest, or with which they have connexion. Or, if an exception of some things has been made, it has been with reluctance; and only when compelled by some such physical impossibility of governing as exists with regard to men's secret thoughts, or by some such strong resistance to external control as men have so stubbornly manifested in affairs of religion.

In now proceeding to give what seems to be a less erroneous account of the peculiar design of political society, I do not presume to present the reader with any short and general definition, but offer for his consideration the following explanations.

In the FIRST place, the body politic has a specific and peculiar relation to Territory, and we may, I think, rely on a ready and unanimous assent to the proposition, that territory is one of the things or subjects (to use the language of Montesquieu) which fall under the political class of human laws, and for the regulation of which the body politic may be said to be designed.

It has been said, indeed, that the Jewish nation in its transit from Egypt to Judea, was an instance of a body politic not allied to territory. But the very statement of the instance destroys its claim to be an exception; for the passage from one place to another was an extraordinary and avowedly temporary condition, not natural to a nation, and in which that people were maintained for the brief time it lasted, only by force of singular local circumstances, and the miraculous guardianship of Heaven. It is a sound and important rule, that we should learn what is essential to the State in general, as well as to any one State in particular, as we learn what is essential to a plant or animal; that is, by regarding it, not in the seed, or in the earliest shoot or gristle, but in the full maturity of its growth. Till it reached and occupied Canaan, the Jewish nation was unformed and unsettled; it was a roving and expeditionary tribe, rather than the nation it was destined

to become. And in the end, a certain relation to a specific space of the earth's surface entered into the actual composition of the Jewish State, as it does into the idea of all political society.

Upon farther consideration, we shall, I imagine, find little difficulty in determining the character of the connexion of territory with the body politic. This connexion is everywhere manifested by the assertion on the part of the State, of a right to the exclusive possession of, and dominion over a particular space; upon which none but its own members are allowed to reside, and over which none but its own officers are allowed to rule. These circumstances point out the ground and reason of the connexion, which may be stated in few words to be, that the State is the proprietor of territory.

By Jurists, property has been defined to be a right to the exclusive use of a specific thing.[1] Originally, the surface of the earth, along with the fruits which spring from it, and the animals which roam over it, although designed by Nature for the subsistence and accommodation of its great inhabitant—man, has not been visibly assigned by her to any one person more than to another. But such specific assignation or appropriation to particular persons, is evidently necessary before these gifts of nature can serve the end for which they were meant. For men to use them, and indeed

[1] *Dominium vero vocamus jus, seu facultatem alios usu rei alicujus excludendi.* Heinnec; *Jur. Nat: et Gent:* lib. i. cap. 9, § ccxxxi. The definition may seem narrow, but it states the only power which no proprietor can be without, and in which every other is implied.

for men to live, each of them must occupy his own spot of earth, and eat his own portion of food. And this subdivision of the world and its fruits, as it is necessary to the existence of men, so it is morally binding upon them. It is the duty of all men to concur in and consent to it; which duty is not merely a private and personal one, or one in regard to which a man is responsible to God and his own conscience alone. It is a social duty; which a man may be compelled by other men to perform or concur in; inasmuch as his non-concurrence, whenever it operates as a hindrance, is a direct injury to them, amounting, as it does, to a withholding from them, in whole or in part, of the means of life.

From these considerations, Jurists have traced the right of property to a general consent of the human race; for, although no written record of such consent exists, it is an allowable fiction, (if, indeed, what universal custom witnesses, can be called a fiction,) which presumes the WILL of the human race to have formally recognised and expressed its DUTY. From similar considerations they have deduced the specific rules of appropriation; settling as to each class of things, its proprietor, and the mode and extent of appropriation, according as its character and its uses dictated. As to the mode of acquiring the property of things external, it has been universally determined that the primary form was OCCUPANCY or possession, partly for the reason that the act of occupancy or possession connects the occupant with the thing occupied more closely than other men, and is a circumstance which, although slight in itself, may yet in a

case in which some one man must be preferred, be allowed to determine the preference in the absence of weightier reasons; and partly because there is in most kinds of occupancy, a degree of labour which, as it is induced by the hope of acquiring the thing for which it is exerted, is justly rewarded by success. With regard again to the extent of the right of property, constituted either by this and the other primary, or by the secondary forms of transference, &c., they have determined it to be permanent or temporary, limited or absolute, according as one or the other appeared in the instance of each several thing, to be adequate as a reward for the labour of the first acquisition, and necessary to educe from the subject the full amount of human uses of which it is capable. Thus, with regard to things naturally useful, but growing or running wild, as no more is required of a man than to take hold of them, so it is concluded, that what is easily got may be as easily lost; that actual apprehension, as it was the origin, so it should be, in point of duration, the limit of a man's right; and that if they escaped from his hand, they should cease to be his. Respecting things again, naturally of little or no value, but made useful by industry and skill, as he who expended the necessary labour upon them was not merely the first occupant, but the creator of their utility, so he was allowed to have a just title to a property in them, as prolonged as their usefulness. A right similarly prolonged in point of time, and equally independent of mere actual possession, was evidently required for the good of society in the case of those subjects

which demanded a length of care and culture before they could evolve the full amount of their possible utility. In short, the same general considerations settle the whole details which gave rise to the first conception of this right, those things being held by natural law capable of appropriation which cannot otherwise be turned to their human uses, and each being appropriable for that time and to that effect, which are necessary to educe these fully.

Among the general considerations which mould the natural law of property, one of great importance is the capacity of the occupant. Evidently he only can be absolute proprietor who can fulfil the end of property, which is to turn the thing appropriated to its greatest utility. He who cannot do this may indeed acquire a limited right in, or be suffered to have a temporary possession of a thing; but in the one case, his interest is short of that of a full and true proprietor, and in the other, it is a mere sufferance, and he must cede possession whenever the competent party appears. In regard to many things, the requisite capacity and power are in single individuals. To pluck an apple that is growing wild, a man requires no aid from other men; and when he eats it, he exhausts its whole utility. He is thus adequate by himself, to the full duties of proprietor. And therefore, natural law holds, that of such things, and of all other things to the cultivation and consumption of which individual powers are competent, the property may be held by individuals. Other things there are, however—such as the sea, large lakes, and rivers, with their shores and banks—which have a

utility so wide and general, that an appropriation of them to an individual would be of little benefit to him, and do much injury to many other persons, or which require, in order to their thorough conversion to human use, greater means than any one man possesses. In this case, accordingly, natural law denies to single men the property of them ; and assigns it either in common to a multitude, or to a combination of men, according as the one or the other is commensurate with their utility, and capable of the oversight which is required to bring it forth. And of the multitude or public body thus vested with the right of property, it becomes the duty to obtain the full uses of the subject, by such a course of management and distribution of its parts, as its nature may require, and their circumstances admit of.

Among the things which allow only of a public proprietor, the principal is the soil or territory of the world. Upon consideration, it will appear that this fair and noble patrimony of man is capable of being made useful to him in at least three several ways :—*first*, as the place of his residence ; *secondly*, as the main source of his food ; *thirdly*, as the medium of access to one's fellowmen, and other external things. It is equally clear that to draw from it the full amount of its utility in any one of these ways, it must not remain common to all mankind, like the ocean or the air, but must be divided among separate proprietors. All of them require that the same person must occupy the same spot for a tract of time, and that in peace and quietness ; he must have time to bestow the necessary labour upon it, and the hope of

such a continued occupancy as shall enable him to reap its fruits. But the same reasons which prescribe its division among separate proprietors, prescribe also that the division shall not be minute and into small patches, and that the proprietors shall not be single persons or single families. The navigable rivers and great lakes of the various continents are too large for individual or family occupancy, while they are incapable of being used in common by all mankind; and the possessor of them, which thus can be no other than a distinct community, must necessarily be the possessor of the adjoining land, in which they are inclosed, or of which they are the arteries and outlets, and the several parts of which they seem to bind into one district, separated to some effect from the rest of the earth. Again, to make the land itself a fit medium of human intercourse—the pathway of traffic and commerce, it is equally necessary, for a variety of very obvious reasons, that such large districts of it, should be under the dominion of a combined multitude. The same inadequacy of an individual, and the same competency of a social proprietor, appear in regard also to the other use of land, which is to yield food for mankind. That cultivation may take place, occupancy must be permanent. But for this neither a single person, nor a single family, present the requisite security. The individual may be short-lived, and so may the family; and as a family can hold and cultivate only a small portion, so even from such portion it has in itself no motive for extracting more produce than will satisfy mere family wants. These must be short of the use

of which it is capable; while by the death of its grown-up members, a family may at any time cease to have the power or the interest to do even so much. Add to this the important consideration, that it is wanting in the physical power to defend itself from aggressors, and consequently is incapable of that secure and peaceable possession which is indispensable to any degree of cultivation. It may be safely concluded, therefore, that single persons or single families are unequal to the function of proprietor of this subject; and that by no title in them, could there have been effected for society that appropriation of the earth's surface to separate possessors, by which alone the capacious treasury of its riches can be laid fully open to mankind.

But all the capacities for that service meet in a nation, or a multitude of families and persons associated for that end. Such a society is in every respect an adequate proprietor of the subject to be occupied and improved. By its numbers, it is equal to the necessary extent of the subject, that is, the district. And the same qualification enables it to hold it permanently and peaceably: *permanently*, because numbers are a guarantee against accidental destruction, or natural decay; *peaceably*, because the physical power of numbers is a guarantee against molestation. Farther, it possesses every requisite for the right administration of the subject; the several parts of which it can put under such laws and management as are suited to their nature. Those portions of the social possession, such as rivers or large waters, which to be fully enjoyed must be open

and common to multitudes, it can hold in its own hands for the use of all its members, indiscriminately. Those portions which require to be brought in, and enriched by culture, before they yield their just return, it can apportion among its several families, giving to each such a species of exclusive usufruct of a particular lot as is sufficient to induce, by requiting, the labour of cultivation. And to ensure that these cultivators of the social domain shall do the duty of extracting from it, not merely a supply for their personal wants, but all its wealth, it surrounds them with multitudes of neighbours, among whom it enables them readily and peaceably to dispose of the surplus produce. Further, it can bind its whole members to a system of laws, empowering each occupant to cede without injury his possession to another, whenever he loses the desire or the ability to cultivate it himself, and which averts the destruction, decay, or even suspension of the industrial operations that death might occasion, by naming beforehand his successor, and giving him a peaceable entry to the vacated lot. Lastly, over the whole domain thus remitted to the industrial occupancy of individual members, the society may ever retain such paramount dominion and guardianship as entitle it not only to regulate the tenure and conditions on which the whole shall be held, but also to recall from its state of individual sub-proprietorship, (upon equitable remuneration to the possessor for its industrial value,) such particular portions as may at any time appear to be needed for social uses, as for roads, for sites of harbours, or of cities, or for any

sort of common or public occupancy. Such are the capacities of a nation or political society. It alone is capable of doing that duty by the surface of the earth which is necessary to make it useful to mankind. It alone can undertake the management of any one of its large natural divisions. It alone can ensure to the portions of that district wanted to rear man's food, that continuous and that extended cultivation which is conducive to its productiveness as well as to its amenity and wholesomeness: to the portions needed for his habitation and intercourse, their consecration to such uses; and to the whole of it, that connexion and union of the several parts, without which none of them could be thoroughly enjoyed. If, therefore, we have correctly traced the right of property in things external to its utility, and are thence bound to assign each several thing to that person, individual or corporate, among men, who can extract from it its whole uses, we must conclude that to the proprietorship of territory, the only qualified claimants are nations or combined multitudes of men, and that one purpose of the existence of such bodies is to discharge for society the function of territorial proprietors.

Some writers, I am aware, have represented the property of the soil to be acquirable by the individual occupants and cultivators; and the function of the nation in regard to territory, to be simply that of protecting this, as it does the moveable goods or the persons of its subjects. It is probable, that the actual history of many a nation may seem to accord with this opinion. Very likely most nations have

begun by a number of families, settled in places neighbouring to each other, where they were exposed to molestation by intruders, as well as from the disorderly among themselves, forming a league to maintain one another in the possession of their lots. On the other hand, however, it is historically true, that the process has been in many instances quite the reverse of this; a whole district having been frequently occupied by a whole people, and thereafter parcelled out by its authority, in yearly, liferent, or perpetual tenancy, among the several families composing it.[1] And in whatever way any nation may arise, it must

[1] Of this the case of Judea is a noted instance, as well as the Barbarian settlements within the Roman Empire, and the modern colonial empires. The instances, indeed, are very numerous. Caesar mentions that the Gauls made an annual partition of their territory among themselves. *De bello Gall.* vi. See *Tacitus de moribus Germanorum*, as to the customs of the Germans. A late traveller among the Circassians, writes, "Inclosures here form the only title-deeds to an estate; when once obliterated, the land reverts to the common stock; and may be appropriated on the same conditions by any body who is disposed to cultivate it. The Circassians cannot see how, except for immediate use, any body can claim an exclusive right to the soil. With them all the elements are common—earth as well as air, fire as well as water, since fuel may be had in any quantity for the cutting. Property here consists in the hands employed in cultivation, and produce already realized."—*Longworth's Year among the Circassians*, p. 177: vol. i. London, 1840. This is hardly correct, if it be understood as meaning that land is in no sense property in Circassia. It is only not private property. The Circassians seem to have as high a notion as any other people of their exclusive right as a nation to their country. And it may be remarked that the antagonists of property invariably mean *individual property*, none that I know of, having ever reached the length of repudiating property in every form.

end by assuming or being invested with a paramount dominion and lordship over the territory enclosed within its jurisdiction—which dominion and lordship is not merely an incident of the *jus eminens* or supreme authority, said to be possessed by the nation over the *persons* of its members, not merely a right through their persons over their possessions, but a direct right in the territory itself as a separate subject.[1] And this right, which the jurists call *imperium*, is not, I apprehend, truly distinct from the right of property or *dominium* which they conceive to be in the individual occupants and quasi-proprietors of the several lots. But the latter is in reality merely an offshoot from the former; and however large the rights of usufruct and disposal are, which the immediate possessors enjoy, they both flow from the State as their granter, and are conceded by it to the grantees, not in deference to any personal title in them, but solely as the means of extracting that service from territory which it is the business of the State to obtain. It is not indeed to be denied that an individual may, by occupancy and culture, constitute in himself directly a certain equitable right in regard to the soil. But apart from the State, his interest would be extremely limited. Most probably it would affect only the industrial fruits and terminate with their reaping, that is, with the year. At the utmost, it would exist only for the term and within the limits of his actual industrial occupancy. If he left it, or if he died, it would be vacant; and,

[1] Grot. de *jure Belli et Pacis*, ii., c. iii., § 4. 1.

in short, except through the State, it is impossible to conceive how individuals could acquire that enduring and comprehensive right which, in civilized countries, is vested in the land-holders. Thus the logical result of those principles to which the doctrine of property is traceable, is that the primary and only real territorial proprietors are the national societies. This is the result, too, which alone is reconcilable with all the observable phenomena. Everywhere the national authorities are seen exercising over the territory within their own bounds, a peculiarly arbitrary and intimate control, and a jurisdiction much larger than is necessary for the mere end of protection and defence. While, with respect to all extra-national and unoccupied tracts of the earth, the common consent of mankind has ruled, that in order to reduce them from their native vacancy and wildness into the condition of property, they must be seized and occupied, not by vagrants and chance-settlers, but by some nation or its representatives.

We conclude, therefore, that territory is one of the things or matters that fall under the body politic, that the nature of the connexion between them is that of property and proprietor, and that one direct cause of the union of mankind in States, is to constitute that relation, in order that they may obtain all the advantages which flow from it.

In the SECOND place, the body politic has a specific and peculiar relation to the Bodily Power or Physical Force of mankind. This power has two applications: the Industrial, of which the object is to fit, for some human use, the subject to which it is applied; the Co-

ercive, of which the object is to control, by bodily pain or constraint, the actions of men. It is with this latter use of it, that the State has connexion; and this connexion is indicated by its claiming everywhere a right to take cognizance of all coercive applications of the physical power of its members. Incidentally to its dominion over territory, and the duty of cultivating it which this implies, the State might seem to have some command over the bodily force of its subjects as an instrument of labour also. Perhaps, if it were expedient, the State might assign to each man his field of labour on the national domain, and by law require him to work it. Some notion of this kind may possibly have been one cause why some ancient and some modern States have assumed the right to require all their subjects to practise a trade or profession. But while the control which, upon that ground, States could have over the industrial force of their subjects, is in principle not direct, but consequent upon its proprietary function, and not universal but limited to one particular service, it has in practice been found to be the most expedient course for mankind, to leave men, as labourers, free and independent; capable indeed of undertaking obligations in that capacity, and therefore liable to be coerced to fulfil them, but not otherwise responsible for or controllable in regard to the employment of their industrial force.[1] Very different,

[1] Of late years, the doctrine that the organization of labour, as it is phrased, is a social right, has spread widely, and a powerful sect advocating a communist system based upon it, has made its appearance in this and other countries.

however, is it with respect to men's bodily power as an instrument of social coercion. Over every such instance of its use, the State everywhere claims jurisdiction, nor may any one presume to exert coercively his force, except with its leave expressed or understood. In general, indeed, it enforces throughout its domain, a total disuse of coercive power by all private persons, and entrusts it exclusively to its own officers; the sole exceptions to the rule in civilized nations being the domestic circle, and those occasions of sudden danger from the lawless, when grievous injury or death would result, if men waited till the regular force could interfere to repel it. In such cases it permits the private party himself to act, and be his own defender.[1] But even then, it is under responsibility to the State, which will accordingly punish him if he exceed certain prescribed limits; if, for example, he wilfully kills or grievously mutilates, when a lesser injury might have sufficed for protection.

It does not appear difficult to explain the reason of this relation between the coercive force of men and the State. Men are drawn together by their sociable nature, and by their common dependence for life and comfort upon the same external things; and to obtain the use of these for such pur-

[1] This is done in deference to rights inseparable from the individual man. For self-defence and also for the government of the family, individuals must have personal command over their physical power; and this they have not by gift or delegation from the State, but by right; the State having a title to call men to account here as elsewhere, only when they exceed their bounds and do wrong.

poses, they find it necessary, as we have seen, to agree upon rules for appropriating the common good, and to unite their industrial power for its conquest and cultivation. But while following this bent of nature, and performing this moral duty, they find themselves impeded by ill-disposed persons, either using their coercive power at their own pleasure, and to the injury of their neighbours, or provoking the use of coercive power by others, sometimes by invading their property, sometimes by refusing to perform their engagements to them, and sometimes (to mention no more) by grossly offensive and irritating behaviour in their presence. There being thus (besides the instinct that prompts rude men to employ force to gain whatever they desire) many just occasions for the use of it, even by the most peaceably disposed, it is obvious, that if men as coercive agents were left independent and free, the effect would be disastrous in the extreme. Whether justly or unjustly exerted, every act of force by one man would lead to a retaliatory act by another. Hence, constantly drawn together by the great laws and standing interests of the race, they would as constantly find the act of congregation to be the institution of universal war, the signal for setting into irregular and contrary motion, all their several coercive forces. They would instantly be driven to seek peace and safety in dispersion, and would learn to shun society and neighbourhood as a worse condition than solitude and the desert. But as this state of dispersion and isolation is an evil and indeed a crime, and as, on the contrary, that of cohesion is at once dutiful

and necessary for man's well-being; and as there arises thence a right in all men to remove whatever hinders them from escaping from the worse and reaching the better condition, it follows that society is entitled to put out of the way that most formidable of all obstacles, the spontaneous and independent exercise by men of their force as an instrument of coercion.

The most obvious and the most efficient means of removing all evils of this sort, would be the removal of ignorance and vice from the minds of men. Thence would result, an unanimous voluntary practice of the laws of personal and social virtue, and not only a cessation of the evil complained of, but an entire disuse of force, whether by States or by individuals, as an agent of human intercourse. But as this enviable and paradisaical condition is far distant, men are driven to attempt such a modification of the evil as is within their reach, and to take means for confining the use of force to just and necessary occasions, and for then exerting it with the most complete and salutary effect.

For this purpose, the best or only means is to take it from under the control of the individual wills of which it is naturally the servant, and place it under that of a public community. Hereby, mankind obtain, *First*, an infallible security that it shall not be used for the disruption and dissolution of society, for any such result is incident to force only when it is under the will of single individuals, and is manifestly incompatible with its position in the hands of a community; *Secondly*, the surest attainable guarantee

that force shall be employed only on just and necessary occasions, inasmuch as the body politic can never have any real public interest to serve by its misapplication, while the personal interest of any individual composing it runs counter to such misapplication, since the example may be turned against himself; And, lastly, the incalculable benefit of gaining whatever good can be said to flow from force, with the smallest alloy of its mischief. It is characteristic of this agent, that it does good only by threatening or inflicting evil. Now the evils from it are at their height, and the compensating benefits at their lowest, when force is in the hands of individuals; for then it is collected in portions which are sufficiently unequal to engender hopes of advantage from coercion, and yet not so unequal as to make resistance to the coercer hopeless. In that state too, as the superiority of one person over another would not be determined without a struggle, so it could not be permanently established except by injuries to the vanquished, productive of a lasting weakness. There would therefore be on every occasion a resort to force, and on every occasion also the largest possible expenditure of it, and the largest possible product of its evils. But these several disadvantages are lowered to their minimum, by the creation of a public authority having super-eminent and irresistible power. This physical agent then acquires a degree of moral efficiency. It acts thenceforth much more upon the mind and by terror, than by actual touch and destruction. It spreads over society a salutary awe, which greatly protects the just from the evil of aggression, and saves those

who would do wrong from the evil of punishment. And on those occasions for its actual application, which nevertheless will still present themselves, it secures that it shall be administered in the manner that is mildest and least hurtful, yet most efficient, because most appropriate, just, and authoritative.

For these reasons men are bound to coalesce, all over the world, in such combinations for the regulated use of coercive force as may be necessary and adequate for the end. And the principle of these combinations is, that every man shall cease to exert his power according to his single pleasure, and, on the contrary, shall, in affairs of coercion, submit to the public will the control and direction of it. No sooner is this done than a most grateful and inspiring change takes place in the world. Men in general disarm, and divesting themselves of the habits and accoutrements of warriors, without which heretofore they could not walk abroad, they apply themselves to the labour of civilisation, committing the business of force to the selected few. And, in their hands, that terrible agent, which before was the enemy, becomes the guardian and stay of social order; which before repelled man from man, now draws them together and cements them in one; which before was a wild, capricious, and dangerous, is now a peaceful, regular, and beneficent energy; which before was the instrument of revenge, and produced the crouching of terror, is now the sword of justice, and has the reverence of conscience; and, like the gigantic Genie of the Eastern story, who was the slave of the lamp,

force moves through the social world, the stupendous subject and minister of Law.

In the THIRD place, it is necessary to the existence and efficiency of the two unions just mentioned —the union for the appropriation of territory, and the union for the regulation of coercive force—that they should coalesce and form one body. Apart from, and independent upon each other, they would be, not merely imperfect, but unable to exist. The society which is formed for one of these functions, is not only the sole body capable of undertaking the other, but must assume it. Thus it is plain, that the union for the regulation of coercive power implies in it and requires a certain relation to territory. The individuals composing it must be neighbours; they must all be resident within certain territorial boundaries; and, as beyond these, the union can have authority over none, so, within them, it must have command over all. In fact, the ground of its jurisdiction over a man must be, that he resides within specific bounds. No other foundation will sustain the superstructure of a coercive community. Personal adherence and submission to it would not suffice, for the parties adhering might not be neighbours to each other, and so, while they would be under no common commander and arbiter, in disputes with the very persons with whom disputes were most likely and dangerous, that is, those dwelling beside them, they would, from living apart, be unable to join their force, and form that grand standing power, which is the main feature of the coercive union. Let us fancy that each man, regardless of his local

position, were to join himself to whatever armed society he pleased, and that the consequence were, the apportionment of earth's inhabitants among a number of unlocalized governments, it is evident, that there would ensue the most complicated interlacing and perpetual clashing of jurisdictions, and a state of insecurity, danger, and contest, little inferior to that from which men had been attempting to escape.[1] Thus, then, it appears that the society for the rule of coercive force has necessarily a connexion with territory. And, upon reflection, that connexion will be seen to imply a title to use territory as a foun-

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[1] A curious illustration of these remarks is described in Mr. Longworth's book on Circassia. He mentions that justice is there obtained by each man attaching himself to one among a number of voluntary societies, the members of which are dispersed, each residing wherever he pleases. The union of the members is so close that they do not intermarry. When a member is injured by the member of another tribe or society, his whole society is offended, while the whole society of the offender is liable for redress, and the two are at feud till redress is given. The redress is settled by a jury, composed of six from each society, and when agreed on, the offending society is bound for it. If it is compensation in value, it is levied from all the members of the offending society, and divided among all the members of the society offended. If redress is refused, the offended society has recourse to forcible reprisals; and till it is settled whether redress is to be given, members of the litigant societies avoid meeting each other, as those of the aggrieved side would have to assault the others, which summary justice would displease their own society, as it would forfeit or diminish their right to compensation. It does not appear that any certain means exist for settling disputes among members of the same society; but the author mentions, that, with a view to avoid these, they prefer having their residences apart from each other, and to be surrounded by members of other tribes.

dation of coercive dominion and jurisdiction. But such use of it evidently implies the occupancy of it permanently and exclusively, that is, to the exclusion of every other coercive society or coercive agents. And as the right of permanent occupancy and exclusive use is no other than a right of property, and as the latter right cannot be in two persons or bodies, it follows, that this society, and the society for the appropriation of territory, must be one and the same.

That they must be one and the same is evident also from this, that the societies which undertake the division and appropriation of the earth, must have the command of coercive power. This is necessary to maintain them in peaceable possession, against external aggressors, and to enforce among their own members the rules for distribution of the common fund. Without coercive force, and, indeed, without the supreme command of it within their own bounds, they would be incapable of the function of proprietors of this peculiar subject. But we have already put all coercive force under the command of a union specifically for its regulation; and it would be a manifest violation of the principle of social order to infringe upon that allotment, by giving any other will the command of force, and dividing men's allegiance in matters of coercion between separate authorities. Since then the territorial proprietor must command coercive force, only the coercive society can be proprietor, for it alone can possess such command. Thus, by another route, we reach again the conclusion, that these two functions are necessarily united in one and the same body; the society for

coercion, and the society for appropriating territory, appearing to be really and logically identical, by its being impossible to work out the idea of the one without also evolving that of the other.

Some may incline to think, that it would be more accurate and more simple to conceive of the body politic, as related to territory, only in the same way as it is related to other things, moral and physical, namely, through its function of regulating coercive power; in the discharge of which territory does, it may be said, come under its jurisdiction, but only, it may be added, incidentally and occasionally, or as being one of the things for the just allocation of which among men, coercive force may be necessary. Upon the application of those to whom territory by right appertains, States may employ their force to assign it to them, and protect them in the enjoyment of it; only, however, as they would interfere for the vindication of the right to any other thing of any other person. This view I myself should deem the correct one, but for two considerations, hinted at before, *First*, That territory is a necessary element in the formation of the coercive society; or, in other words, the union for the regulation of force must have the exclusive use for coercive purposes, that is, be the proprietor, of a specific portion of land. *Secondly*, That the economical, as distinct from the coercive, uses of territory, demand that it shall be assigned in ownership to a company or society. Which being the case, if the union for regulating force be capable of drawing from land its industrial utility, it should seem to be the natural and simple

plan, to hold it to be its entire proprietor, entrusting it with the administration of land, as an economical as well as a coercive subject, instead of imagining two distinct societies, and giving it to one for one purpose, and to the other for a different.

For this reason I ascribe to the body politic a *direct* relation to territory, as well as to bodily force. At the same time, I desire this conclusion to be received with two qualifications or explanations, which a more thorough development of this subject than is here attempted, would show to be indispensable to perfect accuracy of theory. The first is, that the primary and distinguishing characteristic of the body politic is, that it is the ruler of physical force in matters of coercion; that it is, perhaps, only because force requires to be ruled that nations have existence; and that the origin of their *direct* relation to territory is, that their exclusive use of a portion of the earth's surface is wanted for their constitution and operation as coercive bodies. The second is, that having, for this reason, become proprietors of territory as a coercive implement, and having thereafter been entrusted with the office also of putting it to its economical uses, they are to be conceived as acting, in this secondary duty, not simply for the persons composing the coercive league, but also for others. Because the right to land as an economical subject is not in men as coercive, but in men as industrial agents; and although the coercive society must have a certain exclusive use of it, yet it is not entitled to make that exclusion *total* as against persons who are not its members, or, indeed, to

enforce it any further than is necessary for its own coercive organization and efficiency. That being secured, it seems bound to administer land as a subject of which the occupancy, or, at least, the benefit must be thrown open to others; in some sort, indeed, to the whole of mankind without exception; for whom States ought to regard themselves as being in this matter, the trustees and administrators of a common inheritance.

I proceed to remark, in the LAST place, that the two things now mentioned, territory and corporeal coercive force, not merely have the intimate and immediate connexion with the body politic just explained, but do, in fact, constitute its whole subject-matter. Suppose a multitude of persons agreed to possess and maintain as their property a particular territory, and agreed also to put under the command of their common will, their corporeal force in all its coercive uses, and you have a State, a body politic complete as to substance, however undeveloped in its form. To the formation of such a society by man, no farther common understanding is needed. Take, for example, any of those things which usually unite men in large bands, such as community of race, or community of language, and you will perceive that although an agreement of its members in these respects may be of advantage, it is not vital to a State, and that manifestly neither is the principle of union. As little is that principle to be found in the still stronger bond of community of religion. It is not necessary to a State that its members should all be of one faith. Members of different States are

not disabled by their political separation, from being of the same Church; and while their union in a Church does not weaken the just authority and powers of the States to which they respectively belong, as little does their separate citizenship impair the completeness and efficiency of the Church which they unitedly compose. We speak of free Churches. If the contrary must be allowed of such as are established, whose members (when their government is well ordered) must all be of the State which upholds them, this is because their intermixture with the body politic has introduced political matter into their association, of which religion is no longer the only object.

In like manner, if we glance over the other societies ordinary among mankind, as of husband and wife, parent and child, master and servant, or the several more transient and casual unions that take place for ends of profit, pleasure, or improvement, we shall perceive that the subject-matter of every one of them is much too limited in its nature to be the basis of so extensive, strong, and lasting a superstructure as the body politic undeniably is. Not one of them can be mentioned, capable of uniting more than a few men or families, and for longer than a few years at most. Not one requires that its members shall permanently reside in a particular locality; and their perfect disconnexion with, and real independence upon the body politic is evident from this, that every one of them may exist between members of different States. Even to the relations of husband and wife, parent and child, it is not

essential that the parties should agree in political allegiance. The domestic companionship which the relationship requires, ensures that, in point of fact, the State of the husband and father is usually that of the wife and child; but this does not enter into the abstract idea of the relation. Neither does any one depend for its lawfulness and perfection upon the permission or sanction of the State. The relation, whether it be natural or conventional, it is in the moral power of the individual parties fully to constitute. At first sight, indeed, the contrary would appear to be true, from the care which men are under to form all their relations and contracts in the manner which the law of the State prescribes. But, upon examination, it will be seen that they do so because, in some of their details and accidents, or for their execution, their alliances contemplate (either as certain or possible) the use of territory or of coercive force. Now, these are in the exclusive power of the State; and the tenure by which it holds them is, that it shall employ them only in lawful services. Hence it is entitled, in order to secure itself from abusing them, to prescribe all fair tests of what is right; and these every person must be able to fulfil before he can claim the use of either the force or the land of the State. Thus, for example, with respect to the marriage union, no one doubts that its great leading provisions are deducible from natural law, nor that the simple consent of man and woman may, before God and in reason, establish the relation. But if an inhabitant of England desires to secure that land or other property shall transmit to the

children of the marriage, and that his own marital or paternal rights shall have that defence which force can yield them, he must, in contracting the union, comply with those solemnities which, for its own guidance in regulating its territory and power, the State has declared shall be the signs or evidences of a marriage. This is the reason why, in all the transactions of a man's life, he must have constant regard to the law and jurisprudence of States. That law and jurisprudence are the public declaration to society, of the occasions and conditions on which men may have the use of the property and the power with which States are vested. And inasmuch as there are few moments of a man's life in which he feels himself independent of these two grand elements of the social condition, he may as well go out of the world as neglect the declared will of their controller.

To sum up in few words the preceding observations: The existence and welfare of the human family require that men's physical power shall be administered for coercive purposes, by a rule of regularity and justice. The existence and welfare of the human family require also that territory shall be divided and appropriated to separate holders. But neither can be done but by a society formed for the purpose; and to the society which undertakes the one, the other necessarily falls. The society thus called for is the body politic or State, and it is formed whenever an adequate multitude of men unite for the regulation of the land they dwell on, and of their bodily force. This is the foundation upon which the whole superstructure is raised. To those,

indeed, who are accustomed to consider the body politic as a species of universal authority, and to adorn it with an unlimited prerogative, it may be difficult to believe these bare and rude materials to be its sole elements. But such they nevertheless are. And as the political society is limited in its matter to the two things just mentioned, so it will hereafter appear that its whole legitimate action in human affairs is bounded to the application of territory and coercive force to their lawful uses; which is its SOLE END.

CHAPTER III.

OFFICE OF THE STATE IN REGARD TO PHYSICAL FORCE.

Office of the State in regard to Physical Force founded on the moral jurisdiction competent to Man over Man.—Object of this jurisdiction to secure the observance of Moral Law.—Its instruments two: Persuasion and Coercion.—Coercion employable only against Offenders.—All Offenders liable to retaliatory pain and in reparation.—End of Coercion to inflict punishment and exact reparation.—Means of Coercion two: Moral Censure and Physical Force.—When each may be employed.—By whom they may be employed.—Physical Force assigned to States.—Reasons of this allotment.—Effect of this exclusive appropriation of Force to States.—Inference from it as to affairs competent to States.—Their jurisdiction coercive.—Nature of offences censurable by States.—Distinguished into Crimes and private Wrongs.—Grounds of this distinction between offences.—Characteristics of a Crime.—Characteristics of a Wrong.—Some offences are Crimes, but not Wrongs, and *vice versa*.—Action of States against Criminals and against Wrong-doers.—Retaliation the foundation but not the measure of action against Criminals.—The list of offences taken cognizance of by States commonly imperfect.—Causes of this.

In the preceding chapter we came to the conclusion that States are societies, of which the object is to appropriate to separate communities of men the several districts of the earth, and to put the physical force of their occupants, as an instrument of coercion, under a common rule. The society which undertakes one of these duties must, we have seen, assume

the other likewise. Land and Force we have pronounced to be those things which form the cement of those unions termed States or Nations; whose proper function may therefore be said to be, the applying coercive Force and Land to their rightful uses.

I do not expect the reader to assent at present to this account of the body politic; for I must trust for his reception of these speculations, not to an exact demonstration of each proposition as it is advanced, but rather to a harmony appearing in the end, between the theory as fully developed, and the great general facts wherewith history and experience make us acquainted. I do not therefore wait to illustrate, or defend from objections, the doctrines of the preceding chapter, but proceed at once to explain the nature of the duty which, on the assumption that they are true, must be assigned to States. In doing so, I shall alter a little the order of topics, and shall consider, in the first place, the function of the State in its character of holder of coercive force. The reason is, that this is its prominent, and perhaps its only distinctive character. That of proprietor belongs to many other persons and bodies in human society; and it has appeared in the foregoing chapter, that the main reason why States are invested with that character in regard to territory, is that they possess the lordship of coercive force. Of this latter prerogative they are the sole and exclusive possessors; no other person in society (at least out of the limits of the domestic union or family) having the least pretensions to a similar command. Force, besides, is the weapon upon which they depend for doing all

the work, both in regard to land and to every other thing, with which they are charged. It is fitting, therefore, that we begin our inquiries into the function of the body politic, with a consideration of what is involved in the office of holder of force, or, in other words, the morality of the physically coercive agency. Having ascertained when physical force may, and when it may not, be used coercively, we shall be able to trace with some confidence and precision, the just course of States in respect as well to territory as to all other things.

Agreeably to the principles laid down in our preliminary observations, we must hold the law of States in regard to force or land, not to be within their own mere will or absolute free choice. On the contrary, we must consider it as settled by prior and superior causes, discoverable and appreciable by human reason, and under the influence of, and in accordance with which men and States are morally bound to will. True, the rules to which States conform, do ever appear to be, as it were, self-imposed: their form is that of self-legislation; and the words in which any course, whether of action or inaction, is announced, betoken an absolute sovereign, who, of his mere good pleasure, puts a restraint upon his dominion and liberty. But the true meaning of this appearance of unbounded sovereignty is, that States have within their own sphere no human lord, no visible superior formally entitled to issue orders to them; not, however, that they are really independent, that is, quite unbound by law; the truth being, that so far from being subjects of their own will only, they are

quite as really as any private person, under an obligation to do some things and not to do other things; and responsible for its discharge, to God on the one hand, and to society at large on the other.

This being premised, I have to lay before the reader the following observations :—

The foundation of right and duty has been anxiously investigated by philosophers, who have differed very widely in their accounts of it. However, they have all, I think, agreed, that men are, as creatures, under law to God their Creator and supreme moral Governor, and as social beings, under law or obligation to their fellow-men. Accordingly, it is allowed that men are entitled to oversee each other's behaviour, and to require of each other that they shall all conform themselves to the just rule of social life. Certain it is at least, that men do everywhere assume this right, watching one another's actions, magisterially approving or condemning them, and awarding to every one praise or blame, reward or punishment, according as his social conduct has been worthy or the reverse. In this respect the jurisdiction of society over its members, that is, of every man over every other man, appears to be very extensive. Perhaps it may be said to be universal and unlimited; all men having, or at least instinctively acting as if they had, authority to call on all their fellow-men to fulfil every duty, whether to God or man. At least it embraces the practice of every social virtue. It is the fact, accordingly, that a very large portion of every man's hours is spent in this function of sitting in judgment upon the beha-

viour of his neighbours, and in bringing to bear upon men in general, all means and appliances for reducing them into obedience to the laws of social rectitude.

The means or instruments for this end are various; and it is a part of duty to use on each occasion that which is appropriate to it; for in this, as in every other department of action, we must conceive of ourselves as under law, and regard the Draco, who uses commands alone, and sanctions them all by one and the same bloody penalty, as himself a criminal of no ordinary magnitude. Speaking generally, we may arrange the means in two classes. The first comprehends the *persuasive*, or whatever is fitted to lead or draw men to do what is right; such as general moral considerations of justice, truthfulness, utility, fitness, benevolence, glory, &c., addressed to men's intellectual perception of these several qualities and pleasure in their exhibition; religious considerations, addressed to their conscience of responsibility to God; selfish considerations, addressed to their love of pleasure and advantage; or whatever else bears the characteristic of the class—which is, that of seeking to gain its end through the will of the party addressed, presuming and acknowledging him to be a free agent, who is to do what is solicited, from choice only, and because he approves of doing it. The second class is the *coercive*, beginning with threats of pain, and proceeding thence to the privation of accustomed pleasures, more or less complete, on to the infliction of positive pain, more or less intense. These all address themselves to man's fear of evil or his sense of evil, mental and corporeal; and all imply

that the party subjected to them is not a free agent; nor yet merely so far unfree as to be, like other men, under obligation; but over and above, to have come into the condition where his will is no longer to be regarded; where, indeed, it is presumed to be refractory and resistent to what is sought from him; and where, nevertheless, he is to be compelled to perform it. In the use of the first class, there is always implied (though there may not truly be) a liberty in men to do or not do what is proposed to them; a freedom of action or inaction in the particular matter according as their judgment shall incline; whereas in that of the second, it is always announced to men that they are not free, but under the dominion of others. The first furnishes the weapons of an inferior or equal; the second those proper to the hand of a ruler; and, accordingly, though those clothed with authority may at times resort to persuasion, yet authority, as such, always relies upon coercion as its native and most fitting instrument.

Farther, regarding these two classes of means, this also may be noticed, that the fit time for using the persuasive is before duty is to be done; whereas the coercive can be employed only after duty has been violated, or at least after the design to violate it has been made apparent. For the right to use coercion does not exist till a breach of duty has taken place. This is a right which springs out of wrong; it being a clear lesson of the same instinct or principle of our constitution which reveals the existence of coercive authority, that no man is subject to it naturally, or until he becomes a delinquent. Up till that moment

he is a free man, in the only sense in which a moral being can be called free. He is the subject of his own reason and will alone. In this sense man was formed free,

> " And free he must remain
> Till he enthral himself."[1]

Such enthralment is the consequence of doing wrong. Thereupon, by an appointment whose utility is manifest, whose justice is instinctively acknowledged, but whose warrant is wrapped in the mystery shrouding the foundation of morals, he is passed under the yoke, and made liable to the restraint and pain which coercion implies.

The object of the coercive discipline seems to be the same with that of our internal conscience, when after crime it rouses remorse, and of those laws of our material frame which generate disease as the fruit of vice. Its design is to cause men to observe the rules of morality, by demonstrating the inutility and evil of departure from them; and so keeping up, in our social state, that connexion between sin and suffering, which is the general law of the moral universe. With this view, its province is to inflict pain and evil upon all social wrong-doers. But agreeably to its nature, this discipline does not act in an indiscriminating and arbitrary manner; but, on the contrary, carefully consults the character of each wrong, before it proceeds to correction of its author, and lays upon him that precise measure of evil, and

[1] Milton.

no more, which is justly his due. For as it is only an act of wrong that subjects a man to the coercive authority, so the power of that authority over him is defined by the import of the act from which it arises. A man who is a delinquent, falls into its hands with those penal obligations attached to him which his delinquency has entailed upon him ; and so far differing from his fellow-men, and from his former self, as to be now no longer free, but a species of slave, liable to be concussed and driven to duty. Yet his moral nature so far prevails, as that this concussion and coercion may not be universal, nor yet arbitrary, but must be restrained strictly to the exaction of those liabilities only, under which his delinquency has laid him.

Now, upon consideration, all breaches of social duty are not only evil as implying (what all offences do) the mental disorder of their perpetrator, but carry in them two distinct wrongs or evils beyond him to other men. *First*, They all cause a specific loss or damage to him to whom the violated right attaches, by something which his right implies to be his, being either withheld from him, or destroyed, or taken away. *Secondly*, They all cause personal distress and pain, not to their immediate object only, but to all who see or know of them being done. These two ingredients in violations of social rights, —namely, the personal pain, and as distinct from it, the loss or damage they occasion—are in some forms of offence not very separable, in others they very plainly appear, and in all a careful analysis may detect them. Their effect is to impose on the delin-

quents two corresponding obligations or liabilities to those whom their offences have thus wronged. And, *first*, As they have caused loss or damage, it follows that they must repair it. And, *secondly*, As they have caused personal distress and pain, it follows that they must themselves suffer the like in return. The obligation to repair the loss which a wrong-doer causes, will be admitted by all to be founded in reason. But the reasonableness of a retaliatory punishment for the pain he has inflicted, is not so apparent. I do not think it is accounted for by saying, that punishment of wrong-doers is useful as preventing wrongs. This utility of punishment is, indeed, a reason for inflicting it on those who have rendered themselves liable to it, but is not surely the ground of their liability. What the ground is, I do not profess to know. This only appears that men instinctively retaliate pain for pain, and that even the tenderest minds, while shrinking from administering this law of retaliation themselves, do yet own it to be equitable.[1]

[1] Various principles have been stated as the foundation of public punishments. There is, *first*, the principle of utility, or, as it has been expressed of late, (more ostentatiously, but less precisely and philosophically,) the greatest happiness of the greatest number. By the advocates of this theory, the utility of punishments is said to be twofold; namely, reformatory of the criminal, and preventive of future crimes, by inspiring terror in him and others. These are undoubtedly effects of punishment when well administered; but to produce them, must there not be a prior opinion that the punishment is just? *Secondly*, punishment has been referred to the right of self-defence. But an act of self-defence and an act of punishment are two things very distinguishable from one another; and the system of penal discipline presents much that this principle is utterly inad-

Thus the obligations of a social offender may be said to be two, that of reparation, and that of punishment. The former he owes immediately to the person against whom the wrong immediately impinges; the latter he owes to him, and also to mankind at large. And the province of the human coercive authority, under whose jurisdiction his offence brings him, is to exact from him the fulfilment of these his obligations.

Upon farther consideration we find, that mankind, to whom this jurisdiction appertains, are invested with two instruments of coercion wherewith to exe-

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equate to explain. Again, the right to punish has been said to be a provision of the original contract, wherein men, as individuals, resigned to themselves, as a body, a certain portion of that personal dominion and liberty which all possess by nature. The last theory is, that punishment has justice for its foundation; penal discipline having for its immediate end the exaction of that expiation, or, (as I have expressed it,) the infliction of that retaliation which is the moral due of criminals. Of late years the first of these theories has been by far the most popular, many minds having been seduced by the guise of reasonableness and benevolence which it wears, and many subdued by the indefatigable and overbearing dogmatism with which it has been advocated. But although this theory has done much good, by turning men's thoughts to the making punishments useful, it has, as might be expected, failed to satisfy reflecting minds. And there are signs that the one last-mentioned is gaining the assent of philosophers. M. Guizot, (History of European Civilization, sec. 6,) does not think it possible to separate the idea of expiation from that of punishment; and the same doctrine is maintained at length in the *Traité de Droit Pénal* of M. Rossi, Professeur de Droit Romain a l'Académie de Genève, a most able treatise on the whole subject, of which I should doubtless have had occasion to make more frequent mention, had not the text been written nearly as it stands before I was acquainted with it.

cute its awards; one intellectual or moral, the other material; one capable of reaching the mind or conscience of offenders, the other fitted to operate upon their material part, or their bodies and outward estate. The former is moral censure, (in which I include the disapproving judgment and all its manifestations and effects, other than actual bodily coercion,) the latter physical force. These instruments may not be used promiscuously or at random, but must follow some law of fitness and proportion. The most general maxim regarding them is, that such may be employed on each occasion of offence, as is there best fitted to obtain the ends of coercion. Applying this rule, we find that while moral censure may be directed against all offences whatever, physical power can be employed against only a limited number, and even in regard to many of these, to only a limited effect. This arises from differences in the way in which the two social evils inherent in offences are found to operate; and from the rule formerly laid down, that it is these evil effects which determine the kind and amount of the social liabilities which the delinquent incurs, and with which the social coercive authority has to do.

Perhaps our meaning will be most briefly and clearly shewn by some illustrations. Thus, a man who shews ingratitude to his benefactor is a moral delinquent, and, as such, is liable to the coercion of mankind; and, accordingly, he is taken under the coercive jurisdiction of society, for the ends of punishment and reparation. But the dutiful relation of which ingratitude is a breach, is, so to speak, purely

moral or mental, that is, it implies in neither of the parties to it, any specific right or power over the body or outward estate of the other. Farther, the overt acts whereby offences of simple ingratitude are discovered, are always in a physical respect altogether harmless, and carry in them nothing painful, but in so far as they are signs and witnesses of an undutiful mind in their author. Hence it follows, *first*, that the *pain* inflicted by the offence of simple ingratitude, either on the immediate objects of it, or on the bystanders and witnesses, is wholly mental; and, *secondly*, that the loss to the benefactor is of the same nature, consisting as it does, in the mental affection, to which he had a title, being withheld from him. In this case, the law of retaliation observing the rule of proportion and fitness, seems to dictate that the penalty returned to the delinquent, ought, like the pain he caused, to be exclusively mental,[1] and that it should be inflicted by, what may be called, the moral weapons of condemnation and aversion, and their attendant consequences of the withdrawal or relaxation of the offices of goodwill. In like manner, as to the reparatory obligement, since the only appropriate reparation for this species of loss, is repentance for what is done, and amendment in future, which are states of mind producible only by

[1] In one sense, indeed, all punishment is of this kind; the seat of pain being the mind. But this is the metaphysical view of things. Popularly and truly we say that a man is punished in his body or his property; meaning that the pain results from an operation of the punisher upon the body or estate, and also that the pain inflicted is a particular species of suffering.

moral means, it follows, that the only means for effecting reparation which the coercer may employ, are such as accusation, reproach, admonition, or whatever else may, by associating antipathy and condemnation with guilt, awaken the transgressor to a sense of its evil and to the duty of atonement. Most obvious is it, that the coercion of physical power is utterly unsuitable to such a delinquency. To inflict pain upon the body of one who has caused a purely mental disgust or grief, is indeed a common impulse of passion, but is felt by reason to be disproportionate and inexpedient, tending to obliterate all distinction between offences, and weakening the efficacy which punishments derive from the reputation of their equity and fitness. So also as to reparation, while the physical coercion of the ungrateful may put him into the bodily posture of gratitude, and produce other outward signs of that grace, yet it never can effect a true reparation for the wrong. On the contrary, it must inflame it, by discovering that the offender in his heart and mind, by which alone atonement can be made, is not only not making it, but continuing to offend.

Other obligations there are which involve a relation between the parties to them, not purely of thought and emotion, but embracing specifically one or more physical and external things, of which the two great divisions are their bodies and their external property.[1] And, in the *first* place, every man

[1] Some farther explanation is perhaps necessary, and therefore I observe—1*mo*, that there are rights of which the correlative duty is a

is bound to abstain from injuring other men in their property. And when a man violates that obligation, he falls into the state of a delinquent, becoming liable to punishment, and also to repair the loss he

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merely mental or inward act; such as the right of a parent to the mental state or feeling of reverence and love becoming in a child, or that of a benefactor to the affection of gratitude in the recipient of his benefaction. 2*do*, There are rights of which the correlative duty, while it requires from the party bound not only some appropriate mental emotion or state, but some outward act or deed, requires also that the latter shall be performed *ex animo;* the ingredient of *sincerity* constituting the whole value of the outward act. The principal of this class are a man's duties to God, viewed exclusively in reference to him. In discharging these, many outward acts are necessary, but they are not needed by Him to whom they are due, nor are they desired by Him, except when done freely and heartily. 3*tio*, Again, there are rights similar to the last in their appropriate form of duty embracing some outward act; but the outward act, or mode of the duty is not precisely fixed, the idea of the right neither comprehending a precise definition of the mode, nor materials for defining it. Of this nature is the general duty of beneficence, of the mode of discharging which no specific form exists. As an instance, let us take the duty of upholding public worship, which, in one view, is a duty of beneficence. Now, considered as a duty to God, his worship must be upheld *ex animo*, but viewed as a duty of social beneficence, sincerity is not essential, the acts in which the duty discharges itself being valuable to society, altogether irrespective of the motives of the actor. But then, in the idea of this duty viewed as a social one, there is no precise form of execution, nor any materials afforded for fixing how each individual man shall proceed to perform it. This is true of a great variety of similar duties. 4*to*, There are rights which comprehend in the relative duty, outward acts perfectly definite and precise; but these are insignificant in value, so trifling indeed, as not to deserve the concern of a reasonable man. 5*to*, There are rights of which the duties unite the three characteristics, (1.) of involving outward acts, and of these being, (2.) both valuable as distinct from trivial, and, (3.) definite or fixed, the

has caused. But in all the instances of offence which touch property alone, and truly terminate there—such as the nonpayment of a just debt—the *pain* resulting to the immediate sufferer and to society at

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right, (whether natural or conventional,) containing in its idea a definition of the outward form, or pointing out materials by which it may be defined.

Of these several sorts of rights, the first is excluded from the guardianship of the physical power, by its relative duty having existence only as a mental feeling; the second, because the State's interference (although, perhaps, possible in point of fact) would destroy the value of the act of duty which is entirely moral; the third, because the State is furnished with no definition of the duty, and consequently has no rule or measure for applying coercion; the fourth, from the triviality of the duty, as expressed in the maxim *de minimis non curat prætor*. There remain the rights of the fifth class, and these constitute the proper subject-matter of the Jurisprudence and Legislation of States.

It may be added, that that species of misrule which is not lawless tyranny on the one hand, nor loose anarchy on the other, but systematic bad legislation, has commonly proceeded from States assuming to command and enforce by their coercive weapon, some of the classes of duties just described as properly beyond their guardianship. For this purpose, they found it necessary to declare the outward acts by which such duties must be fulfilled; and, as no specific uniform mode was fixed by the idea of the right, what could they do if they would fulfil their assumed task, but invent some form of their own. This, accordingly, they have done. For example, the duty of maintaining the public worship of God they have enforced, by declaring that God requires a particular creed to be believed, and form of worship to be observed, and then commanding all men to conform to and uphold these. Thus, also, they have sometimes enforced the duty of beneficence, by first resolving that the common welfare would be promoted if men were to live on corn grown on particular lands, or to wear particular clothing, and forthwith compelling their own subjects to eat and dress accordingly. In doing so they have run counter to the nature of the right they were seeking to uphold,

large, is exclusively mental; and hence it neither calls for, nor seems in equity to allow of, the retaliation of corporeal punishment. It is otherwise with regard to the obligation to *repair*, which here clearly demands the employment of physical coercion. For the loss which this offence causes is of a material subject, and it can be replaced only by the wrong-doer either surrendering the subject, (if it is in his possession,) or giving from the other similar subjects which he holds, a portion to the injured party equivalent in value to what he has lost. But this is an obligation fulfillable only by some corporeal action or inaction of the offender; and hence the coercive authority may constrain his person till it has been satisfied. To this state of the general liability entailed on this species of offender, the coercive tribunal adapts its procedure. The painful results of the offence being mental, such must also be the nature of the retaliatory punishment; it must not fall on the body of the delinquent. But the loss being physical, and the reparation attainable only by a

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in various respects, but in this chiefly, that regardless of the differences personal and relative between men, they have imposed upon all one and the same mode of fulfilling social duties to which such uniformity is not natural, but which, on the contrary, seek a variety in form as their most rational, virtuous, and useful embodiment. It is said in excuse, that without prescribing a uniform mechanical measure or form, the State could not interfere for their vindication. This is true. But is it an excuse? I rather recognise in it a clear proof of the unjustifiableness of an interference, impracticable except in a mode violating the nature of the right in whose favour it was made.

physical act, the delinquent's person may be constrained for this end. And thus in this case the coercive authority, mindful of its law of wholesome action, may discharge its function by a complex instrumentality.

Once more, men are bound not to injure each other in their bodies or persons; and hence if one assaults and wounds another, he commits an offence exposing him to coercion. But in this instance the pain inflicted by the offence on the person offended is not mental merely, but sensible and bodily; and such also ought, on the principle of retaliation, to be the nature of the penalty. Hence such a delinquent is made to experience at once the indignation and the stripes, the hatred and the blows of the coercing power.[1] Society afflicts both his body and his soul. As to the reparatory obligation resulting from such an offence, it also calls for the physical coercion of the offender. Regarded in one light, every man's body is an article of property, and when by an injury its value is reduced, in whole or in part, as the loss its owner suffers is truly a loss of property, and, as such, one capable of physical admeasurement and reparation, he is entitled in such case, as much as if the wrong had been committed on any separate material subject, to have the offender subjected to the corporeal

[1] Of the doctrine in the text, that *corporeal injuries* are those for which physical or corporeal punishment is due, I have to request the reader to suspend his judgment till he has perused the subsequent part of this chapter, where I endeavour to settle what are corporeal injuries in the estimation of States.

constraint, which is necessary to obtain reparation in kind.

Such then would seem to be the general object and the general rules of the social coercive discipline under which men are living. Its ultimate object is to prevent all violations of social duty; for which end it takes all wrong-doers under its jurisdiction, and subjects them to such punishment as is appropriate to the nature of their offences, and to such other afflictive and constraining discipline as is fitted to make them repair or compensate the losses they have caused. It executes its function by means either moral or physical. Of these, the former is applicable to all offenders, and every variety of offence; the latter suited only to a particular class, being available for the discipline of punishment, only when the offence has carried corporeal harm to the party wronged, and for coercion towards reparation, only when the reparation requires the performance by the delinquent of some corporeal act.

Perhaps this general view of the subject will be better understood and approved when we have applied it to explain the function and action of States.

By a beautiful arrangement of Him, who out of evil still educes good, the right of using the Moral instruments of coercion has not been confined to any particular man, or any body of men in society, but has been conferred on all men individually and indiscriminately. Whence it happens that every manifestation of wrong, every outbreak of vice, is the cause of many triumphs of virtue; for multitudes flock, as it were, to the rescue; and the moral discipline which

their minds go through, while healing the wound that society has received, and coercing its vicious author, sharpens their sense of right, exalts their ideas of duty, and leaves them every way better than it found them. Hence to a fanciful view, vice in the world seems like a man walking through a field of flowers, where every step forces out of the fair things it treads on a fresh stream of fragrance. But while coercion, so far as it is merely mental or moral, is thus fullest of utilities when individuals in the largest numbers are engaged in administering it, the very reverse holds good of that coercion whose weapon is Physical Force. It would evidently aggravate the mischief it is designed to mend, and would, indeed, throw the whole world into tumult and war, if the offenders who fall under the discipline of the Physical Power were amenable to the individual physical, as they are to the individual moral, coercion of all who saw or knew of their offences. A distinction is necessary. The same expediency which invites a multitude to the latter office, requires that the former shall reside in one person alone. One hand only must wield the physical weapon; and hence the reason why the species of coercion of which Force is the instrument, is intrusted to bodies politic; and why they alone are entitled to act for society in this great department of its coercive function.

It seems obvious that the devolution of this branch of coercive discipline upon these peculiar officers, can make no difference in the principles according to which Physical Power is to be applied. Those which were just and imperative, while yet the body politic

was, (if we may so fancy,) non-existent, the same must continue to be the rule after it has been brought into being. At the institution of this society, Force changes merely its holder, not its nature; nothing then takes place save the transference of the command over it from the disunited wills of individual men, to the single will of a collective body, which can make no difference in the moral law of its uses. And yet a great and signal effect does follow this assignment to bodies politic of the whole coercive physical power, which it is necessary we should note. The principle on which the assignment is made, is that every individual resident within certain territorial bounds abdicates, in favour of the State, all right to use the instrument of the physical coercive discipline. Observe the consequence. Before this every man was bound not to employ his physical power in violation of right; but he now undertakes the additional obligation not to employ it even in vindication of right, save when allowed or commanded by the State. Within the jurisdiction proper to the physical coercer, the State is constituted representative of all, and sole agent for all. The result is most important, founding, as it does, this general political rule, that thenceforward every spontaneous exercise by individuals of physical power in coercion, is an offence against the State. Thus, suppose that a man, at the suggestion of his own mind, unjustly assaults and wounds his neighbour; this was always an offence, but it is now no longer (what it was before) a private affair of the injurer and the injured, nor yet a concern only of the indeterminate crowd of onlookers

and sympathisers with the latter. It is now an aggression against the State specifically and directly; and that for two reasons, *first*, Because the party immediately assailed, and the neighbourhood that suffers with him, had constituted the State the sole avenger for them of all such offences; *secondly*, Because the assailant himself is as a member or subject of the State, under an obligation to it to abstain from any voluntary and unsanctioned exercise of his coercive strength; of which obligation his assault is a breach. Again, suppose that one shall, at his own hand, inflict a physical penalty on another who has done unjust violence to himself or a third party, or that one shall forcibly compel another who is his debtor to part with goods or money in payment of his debt;—the act may in either case be no more than just in itself, and what the sufferer perfectly merits. As such accordingly, it might, before the organization of the State, have been quite righteous and orderly. But now it is no longer innocent; it is an offence, and one directly against the State; for the State is now the sole lawful coercer, whether for punishment or reparation, and must therefore hold to be a wrong-doer every one, who, for whatever reason, usurps its prerogative by spontaneously acting for its ends, and using its weapons.

Here, then, there is unquestionably a great practical change. Nevertheless, as I have said, it is not one essentially, or in the moral laws of the coercive agency; but merely one circumstantially, of the hands wherein force is deposited. It is now wholly assigned to one person; not indeed really, for each

man still retains his own individual portion of it, but morally, and in so far as concerns the whole rightful command over it. This now resides in the State alone. Henceforth force is held by individual men no otherwise than as soldiers carry their swords and muskets. They may not use them according to their own pleasure, and must use them at the word of their commander.

We are to conceive, therefore, of the State, first, as being a coercive society, and next, as deputed to act in that department of coercion where physical power is the instrument. And if now we be asked to tell what is the nature of those offences with which States are concerned, I think an answer may be had, by considering, on the one hand, what States have to do, and on the other, the instrument they have to work with. As to the first, it is to coerce men who are moral beings ; as to the second, it is a material instrument, the thews and sinews of men. Reflecting on these two particulars, I conclude that States are entitled to interfere only where one person (1.) having been bound to another, (2.) in a morally lawful obligation, (3.) has broken his bond, (whether by not doing what it enjoined, or by doing what it forbade,) and (4.) has thereby incurred a liability of a kind to be discharged by the instrumentality of his body or material part. Of these requisites, the first three are common to coercion of all kinds ; the last is peculiar to coercion by States. The first and third flow from the principle formerly assumed, that although a man truly ceases to be independent from the instant that he becomes bound to another, yet he

is entitled to be dealt with as a free agent till he has abused his freedom by violating his bond; for then, and then only, he forfeits his liberty, and becomes a subject of the coercive authority. The second results from the moral nature of the coercive discipline, which would manifestly be made to serve ends opposite to its own, if engaged in compelling men to do what the moral law forbade. While the last is imposed by the nature of the weapon which the State wields, and which being capable of operating only upon the physical and external part of man, limits the coercive administration of States to that department of the general coercive jurisdiction which acts by inflicting corporeal constraint or suffering on delinquents.[1]

As therefore only a certain class of wrong-doers is amenable to physical power, the coercive arm of the State, it follows that States have not the guardianship of rights in general. Some maintain that they have. Yet perceiving that States regard with perfect indifference many sins, or violations of rights, as well by omission as commission, they have thought to reconcile this indifference with their theory, by imagining a defect in the neglected rights. Hence they have called such rights or obligations as States permit men to violate with impunity, *imperfect* rights and *imperfect* obligations, in contradistinction to those which States agree to vindicate, which they honour

[1] "Aliter leges," says Cicero, "aliter philosophi:—leges, *quatenus manu tenere res possunt;* philosophi, quatenus, ratione et intelligentia." De officiis iii., c. 17.

with the name of *perfect* rights. But it may be questioned whether there is any real foundation for this distinction in reason, which sees no difference in point of completeness and stringency between the obligation to give alms to a poor neighbour, or to be grateful to a benefactor, and that of paying what we owe. The former have as much as the last the full nature of obligations. Men own this by their conduct; for they act coercively against the uncharitable and the ungrateful by manifestations of contempt, disesteem, and disgust. But they neither punish nor constrain their persons. And here lies the reason why the State takes no account of these and other social offenders of the like class. The liabilities flowing from their offences do not call for the coercion of corporeal force. In this respect the rights they have violated may be termed imperfect. But the imperfection is not in them as rights. It is merely relative to the function of the State, and means no more than that they are of a nature beyond the ability of the State to vindicate from violation. He who violates them does wrong; but his wrong does not bring him under the jurisdiction of the body politic, for it lays upon him no obligation of the kind, for the exaction of which corporeal force may be used.

The same general principles which lead us to these conclusions, explain also other peculiarities of the coercive action of States, and, in particular, the cause or reason of the noted distinction of offences into public and private, or criminal and civil, to be found in the codes of all States whatever. It has appeared

that offences of all kinds subject their authors to a double liability; that of suffering punishment, and that of repairing loss. It has also appeared that these separate parts of the general obligation attaching to offenders, do not always require the same mode of coercion. The duty of reparation may require for its discharge the corporeal restraint or compulsion of the offender, while the penal infliction authorized by his offence may be merely of a mental or moral kind; to which we have determined that punishment is always confined, except where the offence that superinduces it has involved the bodily pain or coercion of the injured party. When this last is the result of a breach of duty, the principle of retaliation makes the breaker's own body the proper subject of penal discipline. But the State is in the social world the sole lawful holder of corporeal force, the instrument by which alone that discipline can be applied corporeally to offenders; and hence it has the exclusive right of exacting from those whose offences carry in them bodily harm to other men, satisfaction of the physically punitive as well as of the reparatory obligation, which by offending they incur. For a separate reason we must assign the corporeal punishment of such offenders to the State. It has appeared that the very being of States implies that every man has yielded up to his own State the command of his corporeal force as an agent of coercion. Wherefore he who, of his own good pleasure, resumes, as it were, his surrendered power, and employs it against his neighbour, violates the right, not only of him whom he immediately assails, but also of the State itself; for he

breaks the compact implied in his character of member of a political society, and is thus an offender against that public person, as well as against his private victim. Hence it is, I conceive, that all offences having the quality of physical coercion or violence bear the name of PUBLIC WRONGS or CRIMES—*crimes*, not because they are intrinsically more immoral than many breaches of right which have not that title, but because they are of that class of offences of which it belongs to the State to visit the perpetrator with the coercion of punishment, as well as the coercion whose end is reparation—*Public crimes*, both for this reason, and because they involve the usurpation by the offender of coercive force, and thus are an invasion of that monopoly of it with which States are invested. Distinct from these are what, in the language of jurists, have the name of WRONGS simply, or *private*, or *civil wrongs*.[1] Which title they bear because, while the reparatory part of the obligation they entail is exigible from the wrong-doer, by means of corporeal coercion, and thus calls for the interference and action of States, the penalty to which they (like other offences) expose their authors, can in their case be justly and appropriately directed only against the mind. This is, therefore, assigned not to the State, but to men in general, or society at large; which being disarmed of all physical power, can punish, if at all, only by moral weapons, by pri-

[1] It will at the same time be borne in mind, that the same offence often is both a crime and a wrong, and accordingly is dealt with as such by the tribunals of justice.

vate censure and aversion, and by its grand organ of public opinion.

If these views are just, we perceive not only that this celebrated distinction of offences into crimes and wrongs, has a permanent reason in nature, but also what it is precisely that creates the distinction. Some jurists regard it as entirely artificial, and caused by positive law alone; holding that States raise offences into crimes and visit them with punishment, when they find by experience that the exaction of reparation merely is insufficient to restrain them to a moderate number. Others, again, hold the juster opinion, that there must be some specific public mischief in an offence, over and above its private injuriousness, to justify its being dealt with as a crime. But when they come to explain wherein that public mischief consists, I think they for the most part fail to describe it in a clear and satisfactory manner; for the same general evils which they ascribe to offences classed as crimes, might with a very little ingenuity be shown to follow equally upon all offences whatever. The explanation contained in the foregoing paragraphs seems free from this fault. It points out, in some of the offences of which States take cognizance, a specific quality that is not in others. It shows that those thus distinguished are naturally *crimes*—that is, naturally visitable with physical punishment; while the others are naturally mere *wrongs*—that is, naturally visitable with physical constraint in order to reparation only. And, while it represents both sorts of offences as so far public as that the body politic is bound to act against both, it proves

such as are crimes to be public, in the peculiar sense of being offences against the State itself—breaches of a duty incumbent on their authors towards the State specifically and directly.[1]

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[1] In the lately published very learned and very valuable "Enquiries Elementary and Historical in the Science of Law," by Mr. Reddie, Legal Assessor to the City of Glasgow, I find the following remarks on the distinction between Civil and Criminal Law, which I quote as the nearest approach to what seems to me the truth, that I am acquainted with. "The grand object of both Civil and Criminal Law is unquestionably the same, to enforce the rights and obligations of individuals. In this they clearly both agree; what then is the peculiar province of each?" . . . "In the Civil Code, the two great points are, the ascertainment of the rights and obligations of individuals, and their establishment or enforcement. The ascertainment of the right necessarily implies and requires a great deal of explanatory matter, so as to embrace the indefinite variety of cases which occur, many of them of a complex nature. But the mere ascertainment of the right would signify little, were it not established and enforced. The judge must not only pronounce a sentence declaring what the law is in the particular case; this sentence must be put in execution, and this execution may affect the person, as well as the condition and estate of the individual, according to the nature of the right enforced. In the Civil Code, then, compulsion or physical force is necessary as well as in the Criminal: here, however, the illegality being chiefly negative, a failure to perform, the province of the judge extends no farther than to make the right in question, from whatever source it may arise, be observed, and the corresponding obligation obeyed or fulfilled." . . . "In the Criminal Code, again, the two great objects for consideration are, the positive act, the violation of the right, and what may be called in one word its vindication. And in this branch of the law, as in the Civil Code, a good deal of explanatory matter is also necessary to ascertain and define the nature of the right invaded, and the mode of violation; in other words, to fix the description of the offence or crime which has been committed. But here, as in the Civil Code, the ascertain-

As this is a topic of interest and moment, and as the foregoing theory may not be at once received, I will here add some farther explanations concerning Crimes, in the first place, and thereafter concerning Wrongs.

I. Perhaps we may describe the characteristic of

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ment of the precise description of the offence would be of little importance, unless some means were devised to prevent the recurrence of such violation, and to secure the individual in the future enjoyment of his right. To enforce the particular right in question is impracticable; for this very right has been already violated. Restitution or reparation, indeed, so far as it is practicable, may be enforced; but this belongs to the Civil not to the Criminal Code. In consequence of the violation of the right, there arises on the part of the aggressor an obligation to make reparation as far as the case admits of it; and a right on the part of the suffering individual to such reparation. And this right and obligation, like any other, it is the province of the civil judge to enforce, upon application to that effect. All then that remains for the Criminal Law to do is, when an offence has been committed, to prevent as far as practicable a similar offence from being committed by the same person, or other individual generally. And the only means the coercive power of the State possesses for this purpose, is by annexing certain artificial painful consequences to the performance of certain mischievous actions—in other words, by punishment. The principal end of punishment is thus to control future action, and this action may be either that of the offender, or of others." . . . "We thus form a pretty accurate notion of the distinct and peculiar provinces of Civil and Criminal Law. The private Civil Law details the various rights and obligations of individuals, and enforces their observance through the medium of the person and the estate of the individual subject to the obligation. The private Criminal Law details the various violations of these rights, and, to a great extent, operates the security of these rights by the dread of the penal consequences which it attaches to such violations."—Pp. 130-2.

a crime to be, that it is an act of corporeal coercion done without authority from the body politic. Of course, it is not meant that no crime is committed unless coercion actually takes place; for the intention to commit such an act, if plainly manifested, may suffice, and the author of an act is the author of its natural and direct consequences, and is responsible for them, as truly a part of his act, even when they, by accident, have failed to follow, or have been intercepted. As little is it meant that no man is a criminal but one who personally inflicts coercion; it being indifferent whether he operate by his own power or by means of other men or things.

Bearing this in mind, let us see whether *unauthorized corporeal coerciveness* be truly, as we have stated, the characteristic quality of crimes. For this purpose, consider the object for which States are appointed. It is to apply force to its morally lawful uses. For this end it requires all its subjects to put themselves in all affairs that are compassable by force, under its sole and sovereign command. Having thus disarmed them, and rendered them, as coercive agents, utterly inefficient, it engages, on its part, to perform all that service with force to which they or any of them are entitled. But the sole lawful coercive service in which, as between one man and another, corporeal force may be employed, is the coercion of offenders; and that only in two forms, either as a punishment, on which occasion pain is inflicted on their bodies or persons, or for reparation, on which occasion they are forced to part with their property in whole or in part. Undertaking to perform these

two coercive operations whensoever justice requires them to be done, the State, on the other hand, most strictly prohibits the doing of them by any other person, by any means, or under any pretext whatever. And with good reason, if it be true, that corporeal coercion (of which these are the two modes) may be administered to none but delinquents, and by none but the coercive authority, which, in this sphere, is the State itself.

Hence arises a reasonable and habitual understanding in society that neither of the two forms of evil just mentioned, namely, the infliction of pain upon men's bodies, and the taking away property from men without their own consent, shall ever befal them, at the hand of their fellow-men, save by the command of the State. And from this again it results, that if any one shall violate this understanding, and of his own pleasure visit other men with either of the evils specifically appropriated to the coercive power, and tolerable only as acts of lawful coercion, he will be guilty of rejecting the ties of the political relation; for he will have done that which all men as individuals had abjured the right to do, acknowledging it to be the business of the State alone. Nor will it matter to the nature of his offence, what are the means he uses—whether he acts personally or by others, whether it be by direct and open force, by stealth, or by fraud, that he operates, if he ends by culpably and designedly producing those effects on person or property, which may lawfully be done only with the public consent and by the public force; it

will suffice to make him guilty of the specific offence of throwing off the bonds of the political relation.

But every such offence is truly an act of unauthorized or unlawful coercion. Because the social arrangement which it breaks through, has for its object the confinement of force to just and peaceable action, and is indeed necessary for that end. Wherefore he who thwarts it, whether by openly disowning the whole authority of the State, or violating any of its particular rights, may not unjustly be charged with an assault more or less aggravated upon the lives of all around. For he does what he can to overturn the arrangement on which the public peace rests, and to bring in that other condition, wherein every man using his power according to his own pleasure, a universal war would prevail. But being of this nature, his offence is a proper crime, and amenable to a physical punishment.

In this view all offences implying a violation of the rights of the State, are virtually acts of corporeal violence, because done in contravention of the system indispensable to the suppression of such violence. And not virtually alone, but, moreover, actually; for such offences have in most, if not in all of their forms, a kind of open lawlessness, which provokes the individuals suffering from them to take instant redress; and, of course, to use force, that so the retaliation and reparation may correspond to the wrong. But such unruly and violent consequences of the provocative acts, are justly imputable to their authors, and make them guilty of crimes, or deeds of un-

authorized coercion, warranting the retribution of physical penalties.

Hereby the class of Crimes undergoes a great enlargement; the State being warranted and required to comprehend within it many offences which seem, at first sight, to lack usually or always, that quality of coercion of men's persons which we have pronounced to be essential to the nature of a crime.

In accordance with these explanations, it is easy to see why among the class of crimes, or offences visitable with physical penalties, there should be comprehended:—

1. All breaches of duty to the State as such, under which head may be enumerated not only high treason, sedition, and political libel—offences directed against its whole being and authority—but those which strike against particular parts of its prerogative and administration; such as offences against public justice, offences against the public revenue, offences against the public property, offences against the public civil, and offences against the public military force. That these, and all such are crimes, results from their being violations of rights vested in the holder of force to qualify him for the execution of his function.

2. Various offences which, although not breaches of rights of the State, as such, may yet be termed public, from the circumstance that they are not directed against any one or more persons in particular, but affect equally and indiscriminately a number of persons, as the whole inhabitants of a neighbourhood or district. Among these may be mentioned,—

First, Such offences as those of mobbing and rioting, and the modern practice of intimidating combinations in affairs of trade.

Second, Offences against the public health, as the culpable introduction or propagation of pestilential diseases, the vending of unwholesome food, or the carrying on of noxious manufactures.

Third, All acts which may not be in themselves dangerous or injurious to life or limb, but which operate in the way of public nuisances. Prominent among such are those termed offences against nature, and all the forms of indecency. These seem justly ranked among crimes from the character of the immorality that characterizes them. By this, as by a species of physical compulsion, they prevent the enjoyment of life and property, driving men from their presence and neighbourhood. In their fouler forms, these offences so taint their perpetrator as to unfit him for human association, and render him a walking pest, which his fellows, if they do not flee from, will violently assail. Hence it is a *social* duty to abstain from them, and hence the State has right to punish, and, if need be, to remove out of sight, those who, by acts so abhorrent to human feelings, convert their persons into provocatives of outrage, and breaches of the peace.

Fourth, The reason just stated accounts for the comprehension among crimes of *offences against religion*. Undoubtedly that irreligion which vents itself in *blasphemy* or *sacrilege*, maliciously shocking the religious feelings of society, is not a moral sin simply, but a proper crime, as it is a fertile

source of commotion and insubordination. Hence it is just that States should by law prohibit and punish such offences against religion. It is plain, however, that it may not justly reckon a man a blasphemer, for instance, simply because he utters opinions which the neighbourhood or the public regard as blasphemous. The crime consists in the design and mode of utterance, and is committed only by one who, from positive malice to those around him, or with unjust regardlessness of their feelings, defames, ridicules, or insults the object of their faith or worship. For in a true juridical view, it is not the uttering false religious opinions that is *criminal*, but the uttering religious opinions, whether true or false, with a design to give pain, and in an irritating and offensive manner. Hence a sound code of laws will at once protect as a fair use of social freedom, every sober declaration of the wildest religious error; and treat as criminal every turbulent assertion of the most undoubted religious truth. In this respect the body politic differs from the Church, the civilian from the theologian. With the latter the criterion of blasphemy is the essential nature, as true or false, of the sentiments expressed; with the former, it is the design and mode of uttering them, as these affect the peace of the surrounding society. In the opinion of the Church only one religion can be profaned; but the State is bound to hold that all the religions professed by its subjects may, in turn, be the objects of this crime.

It is true that in many, if not all codes, other regulations prevail, and other grounds are assigned

for treating offences against decency and religion as crimes, than those just mentioned. Some will have their intrinsic wickedness to be the motive to their legal punishment. But this implies that States are the moral censors of their subjects, entitled "to combat every species of offence that can be committed by them,"[1] and to deal with them from a respect to their moral desert purely—than which I know no doctrine more false and dangerous. Others trace their being ranked among crimes to their social effect, which is to corrupt men's minds, to weaken the power of virtuous principles, and thus to dissolve society. But this is the tendency of all vice; and if this be a good reason for States punishing blasphemers, it will justify the punishment of irreligion of all sorts, and indeed of every breach of the moral law. Such possible, but remote and indefinite effects of vice are, however, no sufficient cause for conferring on the physically coercive authority so comprehensive a prerogative as the conservation of men's moral purity—a prerogative not natural to it; not called for by any necessity or expediency, but solely by the childish fears of the timorous, and the savage rage of the bigoted; and which, if it suppressed the odious immoralities that are made the pretext for resorting to it, would, at the same time, invite and cover the most destructive encroachments upon social liberty. On this subject these hints must suffice. I conclude them with observing, that while the principle upon which I include offences against religion and morality

[1] Bentham.

in the class of crimes, is not capable of any dangerous extension, it has this farther, and by no means slight advantage, that the penalty which it points out as the natural retaliation for them, is comparatively mild, and therefore in the long run far more efficacious than the bloody retribution which men would be prompted, and indeed would be authorized to exact, if their office in dealing with such offences was that of avenging the honour of God, and vindicating the moral law.

Fifth, Another application of the same general principle is seen in that large class of crimes termed popularly—police offences. They all present more or less undisguisedly the characteristic of a breach of the public peace. It is a just principle that the direct causes of crimes are themselves criminal; and hence the State may prohibit practices that are found, by experience, to be causes of crimes. If the trade of pawnbroking is found when free to be a direct cause of fraud, it may put it under regulations; and so with that of selling spirits, if, when without police oversight, it engenders quarrelling and uproar. In like manner, such things as the keeping a disorderly house, or a place for such games, sports, and other practices as collect in bands the lawless members of society, bear the stamp of crimes, or breaches of the peace. This may not be admitted to appear on other acts which have at various times been prohibited and dealt with as criminal by States. Nor can it be denied, that often they have, by their preventive laws, interfered with the innocent liberty of their subjects. Yet in their behalf we may say,

that occasionally acts and behaviour, in their natural operation innocuous to life, have been clothed by the temper of society with a destructive power. A piece of dress, an unmeaning phrase, a simple tune, an idle gesture, have possessed, in certain inflamed seasons, all the significance of a blow, and the inspiration of a call to arms. When invested with this unnatural energy by the fantastic irritability of mankind, they lose their ordinary inoffensiveness, and fall under the temporary censure of the magistrate. On such a principle it was that, in the last century, the British Parliament made it a crime to wear the Highland garb; and the same apology may be offered for, and will often justify many other laws of which historians inform us, and which, at first sight, we are inclined to censure as frivolous and vexatious.

3. A still farther exemplification of the principle is the whole class of crimes directed against specific individuals. These are divided into offences against their persons, and offences against their property. The former are such as,—

First, Actual bodily violence, as manslaughter in all its kinds, and every other form of culpable injury to life and limb.

Second, Conspiracy to effect such injury.

Third, Menace or threats of injury producing bodily fear.

Fourth, Insults and libels which create ill-blood, and transport men into acts of violent revenge.

The characteristic we require is very apparent in all these. It may be thought more difficult to find

it in the other division of offences against specific individuals, and of which the immediate object is their property. These are such as fire-raising, housebreaking, malicious mischief, theft, fraud. But if the explanation formerly given of the nature of an unauthorized coercive act or crime was accurate, the difficulty is more apparent than real. For we have seen that a breach of the public peace, a usurpation of the powers appropriated to the State takes place, not only when a man's person is injured or endangered, but when property is taken from him without his consent or against his will. And all the offences just mentioned have this last if they have not the first of these qualities. This is true even with regard to *fraud;* for the consent obtained by this means is, in the eye of reason, no true consent, and an acquisition made by fraud is as violent in kind, though not in appearance, or perhaps in degree, as one made by open force. Farther, such offences are crimes in this farther respect, that they are direct causes of breaches of the peace. When such wrongdoers are caught in the fact, the injured party and onlookers are irresistibly provoked to use force, either for preventing the offence, if it is not completed, or for obtaining instant redress, if that is possible. And although it is not for them to inflict punishment, yet the lawlessness of such offences is so flagrant, that, inflaming men's minds with passion, they hurry the injured themselves into offences, by impelling them to become their own avengers. Nay, when the offence involves the abstraction of property, it remains a fertile cause of commotion and violence, even after

the booty has been fairly carried away; for should he who has thus lost his goods, chance to light upon them anywhere, he thinks himself entitled to seize them *brevi manu;* and hence would follow a thousand contests. In short, a long train of physical violences is inseparable from every offence, whereby property is taken by destruction, abstraction, or fraud, from its acknowledged owner. And for all the foregoing considerations, by reason of the intrinsic nature as well as the ordinary direct effects of such offences, they are correctly held to be more than simple injuries to property; to be acts of personal violence; deeds, which implying an abnegation of the bonds of the political relation, bring life and limb into immediate peril, and which therefore justly expose those guilty of them to the retaliation of corporeal penalty.

Perhaps these hints will suffice for my present purpose; which, the reader will perceive, is not to present a complete code of criminal jurisprudence, but merely to detect, if possible, what is the true principle of one. And my object is gained if it appears possible to account for the penal jurisdiction of States, by conceiving it to be a system of retaliation for breaches of the peace established for the safety of men's persons. Much more might be said; but even an approach to an adequate discussion of the subject would demand a volume.

II. I proceed to make some yet more brief remarks on the civil jurisdiction of States, or that branch of its coercive administration which has respect to of-

fences viewed as civil wrongs. Here its function is to coerce for the end of reparation. Hence, as the only instrument of coercion proper to States is physical power, it can act in this, as in the other department, only on the occasions when such power can competently be used, and for such effects as it is able to compass. Hence the general result, that reparative coercion can take place for those breaches of right only whereby a person receives damage in his property. By property is meant the subjects of the right so called; namely, all things over which one person (individual or corporate) may possess, as against all other persons, the right of exclusive use. Such is its most general signification; but in the jurisprudence of States its meaning is more limited; for on examination it will be found that States recognise as subjects of the right of property, those things only which have an estimation or value, that can be measured and represented by some material and tangible thing. Either they may be themselves material and tangible, or they may be mere competencies, powers, energies, and faculties; but, in either case, they must have an *exchangeable value;* that is, a worth capable of being ascertained and reckoned by some material standard, such as pounds, shillings, and pence. For every thing capable of such admeasurement, the State will, in the event of its being culpably injured, exact indemnification, by constraining the offender to give up an equivalent portion of his own property. But for nothing else. For if a thing be not thus measurable, if its value be merely notional, mental, or practically undefinable

from its transcendence or insignificance, coercion of the offender's person for reparation becomes inapplicable, because it has then no certain rule or aim, and, in fact, would, if administered, degenerate into the mere infliction of pain.

Upon consideration we shall find, I think, that property, in the sense just stated, may consist either of a man's own person, or of things external to him. (1.) A man's physical strength, or his manual skill, or his reputation for honesty, or his time, is his property ; because it has an ascertainable exchangeable value, being able to command in the market a given price. (2.) Of things external to a man, and which may be his property, there are, *First*, such inanimate objects, natural or artificial, as are appropriable by a specific person or specific persons, and of which the utility has a definable value in exchange. *Secondly*, irrational animals, of which the same thing holds good. *Thirdly*, other human beings ; for over these a man may have many rights ; and all of those rights whose worth can be estimated by material equivalents, are rights of property in a true juridical sense. The reason is, that their capability of a pecuniary admeasurement of value enables the State to coerce for reparation those who violate them, because it enables it to say that a loss has been suffered, to point out the amount, and to employ effective means of reparation. Accordingly, all States do vindicate rights of this kind. But in practice some difficulty may be experienced in determining what ought to be accounted such. Some cases indeed admit of no doubt. Suppose that one man pledges to another his

industrial services for a day. Here it is not doubtful that the power constituted over the pledger's person is a lawful power, and one of the nature of property, and such accordingly as the State ought to acknowledge and maintain. But two cases may be figured. *First*, The power claimed by one man over another may have the quality of property, in so far as it may be capable of valuation ; but it may be questionable whether it is truly a right—that is, whether it is morally lawful. *Secondly*, The power claimed may be indisputably lawful, but it may be questionable whether it has the quality of property; in other words, whether it entitles its possessor to any use of, or interest in the person of its subject, of a known exchangeable value. Of the first, take the instance of slavery, whereby one man is vested with the absolute control and use of another. Here the power has the quality of property, in this respect, that it has an ascertainable value in exchange. But it is a power which degrades a man into a thing. It is, therefore, no true right. On the contrary, slavery being a condition subversive of the true relations of moral beings, the State, which is a moral agent, is bound not only not to institute it, but not even to recognise it as a condition in which a man can be placed, even with his own consent. And the like with regard to all other immoral agreements. As an instance of the second difficulty, take the relations between children and their father. Upon the latter the former have many claims ; but is their right such, that if one slay their parent, they may exact from the slayer damage as for the loss of property ? Some codes answer

this question in the affirmative, others in the negative. I give these not as instances where the true answer is dubious, but to show the kind of questions that may arise.

In farther explanation, let it be observed, that offences of this kind may either be merely threatened or in progress, or they may be completed. If impending merely, they may be prevented. If completed, the process varies with their shapes, which are many. Thus, either property is carried off, as in theft; or withheld, as when one having hired his bodily labour or sold goods to another, refuses to do the stipulated service, or to deliver the thing sold. Or it may be deteriorated, consumed, or otherwise destroyed; as when one's grounds are injured by another's trespass, or one's character by slander. Correspondent to the injury done by each form is the process of redress. When the offence leaves the property still extant, the process may be one enforcing restitution (*vindicatiorei*) or delivery to its owner of the specific thing, or performance of the stipulated service; such specific fulfilment of the duty undone being always preferred when attainable, as the most full and equitable reparation. When that is not possible, as well as when it does not amount to full reparation, the process is, first, to ascertain the extent of the loss of property occasioned by the offence, and then compulsion of the offender follows, for the purpose of effecting a transference of an equal portion of his own property to the injured party. It need scarcely be added, that if redress is rendered voluntarily, the State does not interfere at all;

and its interference ceases the moment redress is gained.

Such, we conceive, is the nature of the State's dealings with the innumerable varieties of civil wrongs. In all there is an offence or a violation of right committed.[1] In all a loss results to the property of him whose right is infringed. In all the loss is capable of being, as it were, translated into and defined by some material equivalent. And in all the operation against the offender is not to punish but simply to force from him the legal equivalent in favour of the party wronged.

On reflection it will appear, that the list of crimes and that of wrongs are by no means coincident. Some offences are crimes, but not wrongs ; for while they break the peace, they cause no loss to any one's property, or none practically definable. We might instance many of the police offences, and many of those crimes which have a public operation, affecting indiscriminately a whole class, neighbourhood, or multitude of persons. Again, many wrongs do not reach the height of crimes. This is true in general of wrongs wherein the offence lies in a mere failure to act. The reason, however, is not, as some have affirmed, that such offences lack the quality of an active encroachment or invasion of right, as if

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[1] There is this difference between *crimes* and *civil wrongs*, that the party coerced for the latter, that is, in order to reparation, is often guilty of offence only by imputation—as when a master is held answerable for injuries done by his servant—while the person coerced by punishment must be morally and personally guilty.

that quality was the criterion of a crime, but merely that, in point of fact, most of them are not attended with a breach of the State's peace, or, in other words, with any injury or pain, actual or constructive to the person. But some are; and accordingly all acts, although of mere failure and omission, which produce that effect—for example, the neglect of a man to feed his infant, by which it dies—cease to be mere wrongs, and are held to be crimes. As an offence of omission has thus at times the character of a crime, so one of commission may have in the eye of the State that of a simple wrong, obliging its author to reparation only. This happens when no personal violence, real or constructive, is inflicted, as in the case of a simple trespass, and of some kinds of slander. Not that the offender is there held free from punishment; because to justify coercion to any effect, the party must be taken to be guilty and liable to reprehension; but that the penalty merited is not one from physical power. Wherefore, the State leaves the punishment to other hands, and confines itself to that coercion which falls within its own province, and whose object is reparation.

It was remarked near the beginning of this chapter, that, among means of coercion, were included simple constraint and proper punishment. It has appeared sufficiently in the course of the subsequent remarks, that, of those forms of coercing, the last, or punishment, is that with which the State visits the offenders who are *criminals;* while the former, or constraint, is its mode of coercing for offences viewed as *wrongs.* In farther explanation, I would here add,

that often the manner in which it deals with a criminal and a mere wrong-doer is ostensibly one and the same; so that on a superficial view it might be said that both were undergoing either punishment or simple constraint. A man for a crime is often imprisoned, and so is one who has merely failed to pay a just debt, which is a simple wrong. In like manner, the same sentence ostensibly is often pronounced against one who has merely injured his neighbour's property, and one who has assaulted his person, both being compelled to part with a portion of their goods; the former under the name of damages, and the latter under the name of a fine. But however outwardly alike, the forms of coercion in such cases are, in their real nature, widely different. In the one case the operation is a punishment; the design in the imprisonment and the fine being to cause a given sum of pain to the subject of them. In the other, it is simple constraint; the purpose of the sentence of imprisonment and of the award of damages being merely to force from him against whom they are directed, reparation for a loss he has culpably caused to another. The distinction is evident. It enters into the operation itself, and modifies the sensation produced by it in the respective delinquents. Common sense and the just feelings of the multitude recognise the difference; nor can I admire the ingenuity of those theorists who seek to obliterate it, thinking to serve the cause of humanity by giving a sentimental gloss to the process of punishment, and confounding things naturally so different, and whose difference it is so important to remember,

as the punitive and the reparative discipline of the State.

In the *second* place, although the foundation of the whole punitive department of coercion is retaliation, and in this general department the State is set to retaliate for such offences as break the peace upon which the security of men's persons is suspended, it does not therefore follow that retaliation is the *measure* of punishment, or, in other words, that the punishment inflicted on criminals should exactly correspond to the injury their crimes have caused, or were fitted to cause to others. The principle of retaliation is so far imperative, as it unanswerably subjects the offenders, in the first place, to a penal discipline, and in the second place, to pain of the like kind which their offences have produced. Yet although for this reason the State is authorized to proceed against the authors of offences against men's persons, by a retaliatory physical process, it is by no means bound to retaliation, in the vulgar sense, of an eye for an eye, and a tooth for a tooth; because the whole coercive discipline is transacted in an intelligent and moral society, and by agents whose aim should correspond with the final object of the system they administer, which is nothing lower than the extirpation of offences from the world. Hence the State is not bound, in the administration of its department, to follow any mechanical rule, but may adjust its whole operations, and especially the pain it dispenses, with a reference to its grand ultimate purpose. Wherefore, although the measures which it adopts against those offenders who are criminals,

must always be of the nature of punishment, and operate either upon their person or their outward estate, yet it is not only consistent with, but indeed required by the nature of its function, that the State should so order its discipline, as that while the criminal is punished, he himself may be reformed, and others be confirmed in virtue, or frightened from vice. In this way, though we must ever stoutly maintain against modern theorists, that *retaliation* is the fundamental principle of criminal jurisprudence, and that *physical punishment* is the proper doom of the class of offenders whom that jurisprudence respects; yet we can, as freely as they, adopt those enlightened and humane modes of dispensing the punishment, by which, in modern times, men have contrived to turn at times into a positive good what is in itself a great evil—an evil which, though resorted to in order to keep away ills still greater than itself, has often been dealt out so unthinkingly and cruelly, as to prove no remedy but an aggravation.

Two opposite errors on this subject are to be avoided. The first is that of conceiving that expediency, not morality, is the principle of the jurisprudence, whether civil or criminal, of the State. The second is that of forgetting that the moral justice which the State is appointed to administer, is properly neither full nor complete; but is limited, first of all, to the species of justice which is termed coercive; next, to coercion only for offences having in them certain qualities; and, lastly, to awarding to such offences, not the whole retribution which they entail, but only that portion of it, of which

physical power is the instrument. Human justice is greatly imperfect, not only because men must judge of desert by outward signs, which are often deceitful, and must walk by general rules, which take no account of distinctions, however real, that are not prominent. But from the misconception last mentioned, its imperfection is generally thought to be greater than it really is, till many have gone forward to the false conclusion, that it is not justice at all, but a system of arbitrary or mere conventional discipline.

Before closing this subject, I would remark, that although the distinctive principle of a crime and a wrong seems susceptible of pretty precise ascertainment, yet the actual lists of crimes and of wrongs adopted by States, have rarely been such as the principle in its purity would sanction. They have erred sometimes by going beyond, sometimes by coming short of the principle. One cause of this appears from the foregoing explanations. In treating of wrongs we laid it down, that property in its juridical sense, comprehends those things only that have an ascertainable value in exchange, from which it followed that States do not exact reparation for injuries to things that have not that quality. Now the character of property in the sense mentioned, is not always and everywhere attached to the same things. Some things which have it at one time, may lose it by reason of some change in men's estimate of them; and things which have it not now, may, from the same cause, acquire it hereafter. Examples of such fluctuation it is not difficult to find. We may take the instance of commercial credit, or the reputation

of wealth, which has an estimable value, and consequently becomes susceptible of suffering an injury which the State can repair, only among communities practising the arts of peace, and deeply immersed in the business of trade and commerce. Another instance is, that of literary property. In the estimation of the philosopher, the productions of genius are always valuable. But it is only in a very civilized age that they possess that species of value which is property, and which alone is value in the eye of the coercive power—a calculable material value—a power to exchange against a given amount of gold and silver. Then only, therefore, does their author become, in a juridical sense, their proprietor. And the right which in consequence the State accords to him in his own creations, as it is founded on these having now acquired an exchangeable value, so it is practically defined by the same circumstance. Hence it is not a perpetual right, to which their author might seem entitled as being their creator. Neither is it a right proportioned to their intrinsic worth, or to their present value among men of taste and wisdom, or to their predicted value with posterity. It is a right adjusted as to its enforcible value, to the present trading standard, being defined upon the principle of securing to the producer such a money profit for his labour as the age is willing to give in exchange for such productions.

In like manner, with respect to crimes, the reason why offences are treated as such is, I may say, always one and the same; but practically, it is not always considered to apply to the same offences;

each age having its own peculiarities of opinion and temperament, and each therefore being liable to take an impression, more or less lively, and more or less painful from the same actions. It has been found, accordingly, not only that one age has punished what was a venial offence in another; but even that this age has reckoned as a virtue what in that was the chiefest of crimes. Religion furnishes a copious illustration. Let a people be sufficiently steeped in superstition, and the least departure from the national worship will have all the outward effects of an atrocious crime. It will break the peace of society as a spark explodes a heap of gunpowder; and the heretic suffers for consequences not natural to his offence, but flowing from it through the ignorance and intolerance of the multitude that rises in arms against him. In such a case the State, yielding to the corrupted will of society, misapplies by undue extension the principle of crime. Equally numerous are the instances of its undue limitation. In the very rude ages, ere yet the idea of the National Union has been fathomed and understood, even the very grossest forms of violence are regarded as private, as mere wrongs to individuals; and hence private and voluntary processes of redress are then tolerated, and sufficient atonement is held to be made, when a pecuniary compensation for the loss sustained is rendered by the delinquent. An offence which, longer than most others, escapes its just treatment, is that of depriving men of their property by fraud. This has all the essentials of a crime; and, accordingly, in no age, except perhaps the most barbarous,

is it unvisited with punishment by law. But for a long time only the grosser forms of it attract notice; nor is it until commerce, having built itself on the foundation of honesty and confidence, has attached to this offence a host of malignant consequences, that it is pursued with penalties through all its shapes and disguises. One chief cause of the enlargement of the State's catalogue of crimes, is the progress of order, which devolves more and more upon Government the business of redress and retaliation. Not for a very long time will men resign the habit of self-vindication, and forego the wild justice of revenge. And so long as the manners of an age assign any work of this nature to private persons, Government will not undertake, or, at least, will not have power to execute, that part of its office. Dependent for its practical strength on the will of society, Government can assail only those offences which society has really resigned to its cognizance. But its authority strengthens along with civilisation; it conquers by degrees, and at last wholly disarms its subjects; and in proportion as it acquires the monopoly of positive force, it assumes more and more the whole responsibility of acting against crimes. At same time, men grow more sensitive to the annoyance that attends offences however light; while for the new load of business which this feeling leads them to throw upon the State, it is more than ever qualified by the new resources and skill to which civilisation gives birth, and by which the State acquires something of the omniscience and ubiquity which jurists ascribe to it in their speculations. The result is, that

not only the public catalogue of crimes is enlarged, but crime itself appears to increase. And those who judge of the condition of society by the records of the public tribunals for the punishment of criminals, cry out against the times, imagining that men are inventing new crimes, and more frequently committing old. But the truth is, that what alarms them is a cheering token of the growing supremacy of order ;—an infallible sign that Society and Government are advancing towards perfection at an equal and harmonious pace ; that Society is daily becoming less tolerant of the lawless and the wrongful, and that Government is daily acquiring more aptitude for its work, and with augmented skill and vigour, bringing to bear on crime the machinery of punishment.

CHAPTER IV.

OFFICE OF THE STATE IN REGARD TO PHYSICAL FORCE

Continued.

Objection to their office being merely coercive founded on their issuing Laws.—Answer to this objection.—Reason why States publish Laws, and why these Laws ostensibly declare and bestow Rights as well as denounce Offences.—Idea of a Law.—Legislation merely incidental to the coercive function.—In legislating, States recognise and acknowledge rights; they do not create them.—Organs of law two:—Judicial tribunals and the Legislature.—Provinces of private and public law respectively.—Source of private and public law.—State law founded on Natural law, but not commensurate with it.—Limits of State legislation.—Sense in which the jurisdiction of the State is universal.—Civil liberty result of sound legislation.—Idea of civil liberty.

To the foregoing account of the function of the State, it may be objected, Why, if it is merely appointed to coerce offenders, has it the prerogative of law-giving, and why in its laws does it define, bestow, and take away rights, and that not in respect to offenders only, but to all men without exception? Surely the promulgation of a code which is, in a large department of affairs, the rule of life in every kind of transaction, betokens a governing authority of a more general nature than the coercive merely; a title to sway men independently altogether of their being

good or bad, innocent or guilty, and to make rights as well as to control offences. Nay, is it not rather true, that to prescribe to society what is right, is the principal and the noblest function of government; and that its coercive authority is simply the sanction of its higher prerogative; a means to the end of effectually executing its great task, which is to lead men onward in the road of improvement and happiness?

To answer this question, and to complete the view of the general principles whereby the State administers Force, I will here subjoin some observations respecting the nature and the object of Legislation.

1. The prerogative of law-giving which States possess, is of the greatest practical importance. But, I think, it will appear that it is truly, in its nature, incidental to the coercive function, and is, indeed, simply one of the means by which that function is discharged.

Being set up in society to coerce offenders, it is incumbent on the State to form a clear idea of what are offences. But the idea of an offence is relative to the idea of a right. In fact, the former of these ideas is derived from the latter, the conception of an offence only then arising in our minds, when we witness the breach of some relation of one person to another, which we had previously judged to be fitting and dutiful. "Had I not known the law," says an inspired writer, "I had not known sin;" and again, "by the law is the knowledge of sin."

If those ideas were not thus inseparable, it would be necessary, for another reason, that he who had

to coerce offenders should learn what are rights, as well as what are offences. Called on to say regarding the latter, to what kind and degree of punishment, and in what kind and amount of reparation, each subjects its perpetrator, it is indispensable that he shall be able to tell what is implied in the rights of which they are contraventions ; for it is only by the import of the right invaded, and the extent of the invasion, that the import of the obligation incurred by the offender can be known.

It is farther necessary that of the rights, of which the State thus finds itself compelled to form a clear conception, it should make a public exposition or declaration. This necessity results from the constitution of the State. We have seen that it is formed by the union of many wills naturally separate, and that its instrument is a combination in one of as many naturally separate forces put under the command of that united will. But a combination of intelligent beings cannot be maintained but on the basis of a common understanding and agreement, not only regarding their design in general, but also regarding all that it is important in the manner of pursuing it. Hence an open conference and comparison of principles and opinions, terminating in a public agreement and resolution, settling the occasions and the manner of their joint action. If the coercive authority consisted of a single individual, he might not need to declare the grounds and course of his procedure, but might leave his subjects to discover the latter by experience, and the former by observation and reflection. Such indeed is the manner of God's govern-

ment of those whom revelation has not reached. An example, more akin perhaps to our immediate subject, is afforded by many of those ill-conditioned countries wherein the whole political power is concentrated in one hand, and where, accordingly, no public conferences or conventions being required for the action (such as it is) of the ruling authority, the result is that the published code of rights and offences is defective in the extreme, containing usually only some few heads, and leaving an infinite liberty to the caprice of the sovereign.[1] It is quite otherwise wheresoever the State is more happily constituted, and political power has approached, even in a small degree, to what would seem to be its final or normal condition—the being universally diffused. There, all the coercive operations of the public authority are preceded by a declaration of what is styled the law; that is, a definition of what are men's rights in relation to the matter in hand, and of the retribution that will be exacted from those who violate them. This declaration proceeds from a tribunal authorized and qualified to collect the sense of those whose combined and corporate force is to be its sanction. And the declaration thus made, although in form it is a command to others, (for the reason that it concerns them

[1] Usually we say, but not always. In some slavish communities the absolutism of the sovereign has arisen out of, or been preceded by a theocracy or priestly rule; and there the laws, though little observed in practice, have erred as much on the side of minuteness, comprehensiveness, and precision, as elsewhere on that of scantiness and vagueness.

by the eventual penalties with which it threatens them,) is truly, in the first instance, nothing more than an embodiment, for the satisfaction of the coercing body, of what has been collected to be the will and resolution of its members respecting the matter under its consideration.

These announcements of rights and offences do not merely arise thus, through the natural working of the constitution of the body politic, but are often due from it to society at large. What is the right of a man is always obligatory upon his brethren ; and although murder had never been *declared* to be an offence, it would always have been lawful to punish a murderer. But while the relations of right in which men stand to each other are quite clear and well known in regard to many situations, and although the same principles which prevail in these, govern men in the whole of life ; yet as society becomes civilized, new arrangements take place, and men are thrown into more complex conditions, in regard to which it requires often more than ordinary sagacity to tell how the principles of right apply. Farther, there seem to be rights which require, in order to their practical efficiency, some conventional arrangement recognising them, and determining their import and mode of operation, (a proceeding to which only a highly civilized society is equal) ; and as before that is made, men, as individuals, are perhaps not bound, because, in truth, not able to respect them, so when it is made they are entitled to have due warning of its existence. Thus the right of inventors and men of letters in their several performances was

never, we believe, other in the eye of reason than what it has now been recognised to be by civilized nations. But until that recognition was made by the authorities of each State, and a special arrangement for giving the right effect had been settled and sanctioned, the duty of respecting it did not fall on private subjects. In like manner, the duty under which all men lie, of serving the State, remains general and, so to speak, inoperative, until the manner of performance has been pointed out by some law or direction of the State itself; nor till that is done, can any man be fairly punished because he has failed to serve it in a particular way. While rights are thus not obvious, or thus practically non-existing, it is felt to be always hard, and sometimes to be iniquitous, to award the retribution due to offenders, against those who have practically infringed them. Hence another reason for a public declaration of rights by the coercive power.—A still farther reason, and one holding good, not only when rights that are obscure are to be made clear, and rights that are general are to be made particular, but in regard to all rights whatsoever, is derived from a consideration of the ends of the coercive discipline. One of these is to repair the damage that the well-doing suffer from the unjust and violent; for accomplishing which, it is fitting that the former should be informed how they may so place their persons and properties, as easily to command the remedial interference of the State, in the event of their suffering wrong. Another is, to deter the unrighteous from committing wrongs; with which effect a public declaration of what the State honours as rights, and

of the retribution with which it will visit the breach of them, may often be attended.

The relations which the State is thus led to explore, develop, and declare, in its inquiries concerning offences, obtain only between beings endowed with reason and will, that is persons; although the subjects with reference to which they are formed, may be, and often are, material and unintelligent things. Further, these relations affect the persons between whom they obtain differently, and hence go by different names, according as they are viewed as residing in one or in another. *First*, They all imply that one of the parties connected by them can call upon another to do, forbear to do, or suffer something; and in this view they pass by the name of RIGHTS. *Secondly*, They all imply that one party is bound to another to do, forbear, or suffer; and in this view they bear the name of DUTIES. *Thirdly*, They all imply that if the party standing in the relation of duty, shall not conform to what it binds him, he will incur an obligation to a third party—the coercive authority—becoming liable to coercion at its hands for punishment and reparation; and in this view they go by the name of LAWS, that is, duties conceived as grounds of an eventual liability to penalties. It is, I conceive, solely in this, their last character, that States have any concern with the relations in question. Nor indeed does it appear, except for the undutifulness of those tied by such relations, and the consequent penal discipline which it calls for, that there would have been any insurmountable necessity for such societies as States. Hence in taking account of

these relations, the State can properly view them merely as the index to the occasions for the exercise of the coercive strength, of which it is the depository. For this reason, in making the public declarations (which we have seen to be needful) of the offences for which it means to coerce, and consequently of the rights which it means to vindicate, it necessarily conceives rights and duties in their character of Laws, or grounds of eventual liability to coercive discipline. And so also, having thus its view fixed chiefly on the coercive action to which they may give occasion, it as necessarily clothes its announcements of them in words of command and menace. It is in such language, accordingly, and under their name of laws, that rights and duties appear in the public codes of the State.

Such, I think, are some of the reasons why States are lawgivers, and why, although they truly have no other office than that of coercing offenders, they lay down so extensively and so authoritatively the particulars of rights. The minute delineation which their codes contain of the principles of moral obligation in general, their specification and analysis of those which more particularly relate to the social state, and determine men's power over each other and over external things; their authoritative determination of what rights are attached to each of the great natural conditions of life, of what rights individuals may acquire by occasional actions or events, and of what men may create by voluntary convention; with their detailed specification of the import of each right separately, and of the duties, negative and po-

sitive, incumbent on those against whom each right avails; these, with many other particulars too numerous to mention, to be found in the codes, written and unwritten, of civilized nations, might seem, at first sight, not capable of being accounted for, except by supposing that States are the authors of the rights possessed by men in society; that they have the prerogative of making and unmaking duty, and of devising for their subjects an obligatory rule of life. But a more careful consideration will remove this misconception; and we learn that such analyses and announcements of rights and duties belong to the (as it were) mechanical action of the State; taking place as they necessarily do, in the process which it goes through, when making up its mind regarding the occasions proper for the exertion of the coercive force; that it is not because they are thus announced and decreed by the State, that such rights and duties are binding upon mankind;[1] and that, in truth, the main

[1] In a remarkable passage, Locke lays it down, *first*, That though some of the obligations under which men lie, suppose the existence of human society, yet all, whether personal or relative, are antecedent to human law, being imposed by the law of God; *secondly*, That things indifferent by the Divine law, cannot have their nature altered by the power of man, and so "no human law can lay any obligation on the conscience;" *thirdly*, That when human laws command or forbid actions, commanded or forbidden by the Divine law, the conscience is bound to entire obedience; because here Divine authority concurs with human, and all Divine laws oblige the conscience; but, *fourthly*, The conscience is not obliged to entire obedience, when the action is commanded or forbidden by human law, but is indifferent by the Divine; for here a man has the alternative to yield either active obedience, that is conform to the law, or pas-

use to men in general of their publication as State laws, is that of a guide to a prudent external behaviour; a warning to all persons within the compass of each body politic, how they may lead quiet and protected lives, avoid the reprehending, and command, when wronged by their neighbours, the redressing action of the physical power.

We may add, that to give such public warning and information is part of the ordinary business of courts of justice. A great, perhaps the chief and primary part of their office indeed, is to serve in the actual execution of the coercive discipline in particular cases—to level and point the retributive force of the State, and, as it were, conduct it towards the heads of particular delinquents. But they also fulfil a species of premonitory or preventive office; sitting as oracles to be consulted regarding the opinion of the power that speaks by them. To them, accordingly, men repair on occasions of doubt respecting what is legal right and wrong, and having obtained an answer, are able to shape their behaviour so as not to incur the doom of offenders.

2. In what we have said, we have assumed, what may now be clearly expressed, that the code of rights

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sive obedience, that is undergo the penalty of violating it; and he is bound even to this extent, not "in virtue of the human law that he practises or is punished by, but by that law of God which forbids disturbance or dissolution of governments;" and which he affirms is fulfilled in the case supposed, as much by a man's quiet submission to the penalty, as by his active obedience to the magistrate's command. I give the import of the passage, which well deserves the attention of the reader.—*King's Life of Locke*, vol. i. p. 114.

and duties which States do thus publish, is in its substance neither determined by their own absolute and supreme will, nor yet invented by their ingenuity in order to any ends of wealth, glory, or power in which they may have chosen to place their happiness. It is a transcript or copy, more or less exact and full, of what men know by the name of the law of nature or the moral law; by which we mean simply, that body of relations to which the enlightened mind applies the word dutiful, and of which it feels that human society would be an exact pattern, if men were in a condition of perfection—intellectual, moral, and physical. That such a condition is not that of human nature at present; but that it may be more nearly approached by mankind, although perhaps it may never be fully realized; in other words, that we are improveable beings, and that the condition native and proper to us is one in which improvement has ended in perfection, is a faith, or perhaps instinct, common to all mankind, deep-seated and ineradicable, constant, powerful, and impulsive beyond all other springs of action. Everywhere, accordingly, men are striving to know and reach that better condition, and everywhere society is adopting its rules one by one, as it comes to the knowledge of, and is able to follow them. Thus also ought States to do in the department of legislation; where their true work is to interpret the mind of the great Lawgiver, and then recognise His will as their rule. In this view, it has been justly said that States do not make rights; they merely acknowledge

them.[1] State legislation is, in great part, nothing but recognition. It announces what the so-called lawgiver has discovered to be right or duty; for the purpose of making provision for exerting in its vindication, when necessary, that coercive power of which he is the minister. Nor indeed is anything truly left to his invention or discretion, except to choose the specific mode from among the many that present themselves, in which his power will best fulfil the task imposed upon it.

This will appear more clearly on a little reflection. The two great organs of positive law in civilized communities are the legislature and courts of justice.

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[1] Leiber's Manual of Political Ethics, book ii., chap. iv. M. Mercier de la Rivière gives the following definition of legislative power. "On doit remarquer ici que le terme de *faire* des lois est une façon de parler fort impropre, et qu'on ne doit point entendre par cette expression, le *droit* et le pouvoir d' imaginer, d' inventer, et d' instituer des lois positives qui ne soient pas *déjà faites*, c'est-à-dire, qui ne soient pas des conséquences nécessaires de celles qui constituent l'ordre naturel et essentiel de la Société." "Mais comme le pouvoir législatif ne peut être institué que pour établir de bonnes lois positives, des lois dont la raison primitive soit dans celles que Dieu nous a dictées lui-même, et selon lesquelles toute société doit être gouvernée, ce pouvoir n'est plus dans le Législateur que le droit exclusif de manifester par des signes sensibles aux autres hommes, les résultats des lois naturelles et essentielles de la société, après qu'ils lui sont devenus évidents, et de les sceller du sceau de son autorité, pour leur imprimer un caractère qui soit pour tous les esprits et toutes les volontés, le point fixe de leur réunion." Again he lays it down, that "le pouvoir législatif n'est donc autre chose que le pouvoir d'annoncer des lois déjà faites nécessairement, et de les armer d'une force coercitive."—See the well-known work entitled, *L'Ordre Naturel et Essentiel des Sociétés Politiques*, chap. 15.

In the last mentioned sometimes one, sometimes more, but always a very small number of individuals officiate, avowedly as the subordinate servants of the sovereign State. Yet it is well-known, that they do in fact discharge the function of law-giving, which may seem to be competent exclusively to the State in person. Much of their business, indeed, is simply to serve in the execution of laws promulgated by the State through the legislature; but respecting many affairs regarding which the legislature has never spoken, the judges declare the law, and their declarations bind the State, and form for the time and in future, an imperative rule for the administration of its coercive power. This is true more especially of what is termed private law, or those rights and duties which obtain between men in the private relations of life, and with reference to external things capable of private appropriation. Many of the legal rules concerning these no doubt are taken from custom, or the national consent or will as indicated by the national practice. But while those customs owe their legal force to the sanction of the judges, and so may be said to be made law by them, most of the other rules have had their first conception in the minds of judges, and still have no other political sanction than what their judicial adoption of them has given. Most wisely does the State intrust to these functionaries the making (so to speak) of the code of rights and duties in this department of civil life. But wherefore wisely? Only because the true rules are not like a path that is to be devised, but like one that is to be explored, and because after the first few steps, the

track becomes so intricate and the traces so faint, that none but men of penetration, skill, and delicacy of observation can pass steadily along it. In plainer terms, the State has consented to maintain the relations of men according to the highest form of moral right. But the rule of right is not always at once perceptible, nor indeed can it be discovered at times except by a patient process, during which principles are analyzed, facts scrutinized, tested, and set in right order and dependence, and the conclusion slowly educed from a careful comparison of the two. Evidently this is not a task for the legislature or full assembly of the members of the body politic; the wisdom of which (when it is well organized) is no doubt great, but of a peculiar kind; such as well fits it for deciding on affairs of national or general concernment, but not so well for adjusting the matters that fall out between man and man, or unravelling the confusion into which private affairs are prone to run, from every several man blindly pursuing his individual interest. This, therefore, it intrusts to the apter hands of men trained to the business; and these execute their task by taking counsel from, and following in their awards, as they best may, the rules of a refined natural equity. Examine accordingly the private law of civilized States, and it will be found that most part of it is taken avowedly and even ostentatiously from what is termed the law of nature; the boast of its framers being that they have derived it from reasons which owe nothing of their force either to the will of the State, or to the time when, the place where, or the men among whom they live, but

are of innate, permanent, and universal authority. And as such supereminent and ever-authoritative reasons were the foundation of their law, so do they still supply the materials of the rising fabric. The stream of private law has not merely its first spring in a region beyond the State ; it still communicates with its fountain, and is every day freshened and enlarged by its waters. In plainer terms, the administrators of law never cease from recurring to the same general principles and reasons which gave its earliest rules : And whenever new experience of human life and assiduous study open to them, as they daily do, larger and clearer views of the divinely-fashioned model, an effort is made to conform to it the rules of the State ; jurists of all countries, in the meanwhile, concurring in awarding the palm of honour to whatsoever code is most faithfully copied from the all-perfect lineaments of nature.

From precisely the same source, though by different means, is taken that portion of positive or State law which is contained in the enactments of Legislatures. These, indeed, are couched usually in language which might seem to betoken that they expressed the mere absolute will of the body politic. But this arises from their proceeding directly from the lips of the State in person. And upon examination, they turn out to be either recognitions and assertions of pre-established rights, or acknowledgment of pre-ordained duties, all that is done regarding them by those legislators who know their province, being simply that they are fitted with the coercive machinery requisite for redressing any

neglect or violation of them. This will appear, if we attend to the usual occasions on which acts of legislation take place.

It has been seen that the characteristic of those rights and duties which are left to be announced by the ministers of justice, is, that they make up the matter of what is termed private law; they are such relations as are competent to men as individuals; such rights as every man possesses against every other individual man, or such rights and duties as may be constituted between one man and another, or between a small number of individuals, and with reference either to their personal acts or the disposal of certain external things. In these affairs of individual or limited interest and effect, the State is no otherwise concerned than as a species of arbiter. Called on to lend its force in support of one individual, or other private person, and against another, it is interested only in having some assurance that, when it interferes, it is on a fit occasion, and against a real offender. It feels quite at liberty, therefore, to intrust the task of finding out what it becomes it to do in such cases, to chosen officers, presiding in courts open to the complainants against wrong, and suitors for remedial justice. It is otherwise where the matters to be dealt with concern itself as a distinct person. There are rights which belong to the State as such available against every one of its subjects as individuals; and again, there are duties owing by the State as such to the same persons. In the regulations for the assertion of its rights and for the performance of its duties, the State as such

is deeply and, so to speak, personally interested. Here, therefore, the entire community must be consulted, agreeably to the example of the ancient Germans, of whom Tacitus tells us, that while their leaders had the direction of inferior matters, the greater affairs were deliberated on by all—*de minoribus rebus principes consultant de majoribus omnes.* Even if the ministers of justice were competent to deal wisely with concerns requiring, for their right adjustment, an acquaintance with the condition of the State as a whole, (which indeed they are not,) it would be incongruous to allow them, its mere servants, the prerogative of declaring what is public law. Many rights, especially of the kind inferring active duties on the person against whom they avail, require that those clothed with them shall signify their will that they be observed, before they can justly complain, if they are not respected. But such intimations of its will in regard to the rights of this kind competent to the State, can come only from its congregated members, or the Legislature their direct organ; and what that body shall determine, no other and inferior authority can be allowed to alter. It is still more plain that the highest public assembly can alone declare what is law, when the matter is a *duty* incumbent on the State, when the State is not the party having right, but the party under obligation. The main purpose for which States make public recognitions of rights and duties is, that provision may be made for the administration of their coercive physical sanctions. But where the party liable in duty is the State, who shall coerce it, if it fail in perform-

ance? Manifestly itself alone; no other person having either the authority or the means to administer the requisite discipline. Physical coercion, therefore, is in regard to such duties impossible, at least in the first instance. And they would ever remain unenforcible, unless the State voluntarily acknowledged and agreed to fulfil them, and moreover, contrived some means by which those clothed with the relative rights might be able to maintain them. This accordingly it does. Some person or persons are set to represent the State in the matter; with a charge to execute the service it is bound to render: while those having right to the service are vested with a legal title to demand it from the State's delegates. In this way the matter is arranged. But to effect it, there is plainly necessary an act of legislation; that is, a public agreement of the congregated members of the State.

There is yet another occasion on which a legislative publication of right or duty may be requisite; and that is when the private law, or law declared primarily by the ministers of justice, is found to be erroneous. Ignorance or misconception may have led them to mistake the rule of right. But authorized as they are to decide in name of the State, they have created an expectation on the part of its subjects, that it will thenceforward observe a particular course, and have in a manner pledged it to respect their errors. To release the State from this obligation does not belong to them; both because they know not that it is its will to be free, and because as their only mode of declaring what is law,

is while inquiring into and deciding disputes between individuals, it would be unjust if on such an occasion they suddenly went counter to their previous course, and were false to the expectation it had raised. The necessary amendment can, in short, be effected only by the State in person, speaking its will by means of its legislative assembly.

Once more, a call for legislative interference may arise from the defectiveness of the judicial code. Framed, as it has been, chiefly in an early period of social progress, it will probably be destitute of rules applicable to the new combinations of private persons for industrial and other lawful objects, which the advance of civilisation cannot fail to beget from time to time. To recognise such combinations as having a legal existence, and protect them in the prosecution of their useful or innocent designs, is the duty of the State. But the courts of law which execute this duty for it, as they find in their old precedents and rules no warrant for extending the protection needed to such novel claimants, would refuse to do so, unless specially empowered and directed by the Legislature. For this reason application is made to the Legislature, and by general or special enactments, (of old called *privilegia*,) the rules which equity recognises as fitting to the new relations among its subjects, are added to the system of laws.

By these reasons we account both for much that is emendatory and supplementary in the department of private law, being to be found in statutes or professed acts of legislation, and also for these or ancient public customs (a species of legislation) being

the vehicles in which are contained the whole of what is termed public law. Of this nature are the laws for the organization of the State, or *the constitutional code.* And all those for the execution of its business—such as the *financial code,* defining the taxes to be levied and the mode of levy—the *educational code,* providing for such services as the State may owe its subjects in regard to religion, literature, art, and science—the *judicial code,* appointing the courts of justice, fixing their jurisdiction, and their rules of evidence and of procedure—the *territorial code,* concerning the tenure of land, its mode of acquisition, alienation, descent, and the respective rights of the public and of private persons, and providing for the formation of highways, bridges, &c., and for the management of coasts and rivers—the *code of police,* whether preventive or executive, including in the former (as one of its branches) provisions against vagrancy and poverty, its cause—the *military code,* providing for the public defence in case of war—and to mention no more, a code fixing national standards of weight, measure, time, and value. All of these several codes are taken up with the rights competent to the State against its subjects and others, or with the duties incumbent on the State towards them. Hence it belongs to the State to declare them; and hence, accordingly, what is law in those matters, can be gathered only from the words of the legislative body, which is, so to speak, the mouth and tongue of the State.

But although the organ of law in those departments is the Legislature, the spring or source of law

is still the same. In the act of legislating, the State is merely adopting and proclaiming its resolution to observe the rules to which the great head of nature has willed that men should conform in organising States, and States in discharging their coercive function; and to the knowledge of which he has granted them ability to come, by a due use of observation and reflection. If there were erected in this world a coercive authority endowed with physical power, and as high above States as States are above private persons, we should probably see the whole of those duties incumbent on States towards society, which are now dependent for their enforcement upon the States choosing to embody them in legislative acts, declared to them in the form of commands; and perhaps, too, those of them that neglected or refused compliance, subjected to visible coercion for punishment or reparation. An approach to the creation of such a supreme power over individual States, and to the administration of such remedial discipline, is even now occasionally made. Not unfrequently several nations are seen uniting for the purpose of checking a neighbour in some career of wickedness. Thus not long ago, the great powers of Europe demanded that the Porte should protect from violence and plunder its Christian subjects; and in former times, England, when headed by Cromwell, strove to interpose the shield of a Protestant league between the Piedmontese and their persecuting sovereign. It is not to be doubted that the Great Ruler of nations is even now carrying on such a disciplinary government; not indeed by the visible hands of intelligent

agents set to do the work, but in the comparative prosperity by which some States are blessed, and the comparative misery under which others groan; in which difference of their lots it behoves men to discover something more than the blind and necessary issue of material forces and human passions; an adjudication by heaven according to moral desert, comforting or afflicting the nations in proportion as they come near to, or fall short of, doing their duty.

3. But while political law—by which I here mean the entire code of the State, public and private, civil and criminal, organic and administrative—is thus drawn from, and, as it were, executory of that law which God has ordained for the life of individuals and nations, it is not commensurate with it, but contains only a limited number of its provisions, that is, of the rights and duties by which mankind are related to each other.

True, indeed, in so far as regards proper public law, or those provisions which express the rights pertaining to, and the duties incumbent on the State, the political code and the code of nature ought to be exactly similar. Because the State is simply a combination or society of the possessors of physical power. And its relations as a moral person to the other persons of whom human society is composed, must be determined by its essential nature. Hence, all its duties must be of a kind which physical power, its only instrument, can discharge; and hence, also, all its rights must bind its obligants in the same character, and admit of being satisfied by some outward

and material act or operation. Both its rights and duties therefore may, when violated, be vindicated by a process of physical coercion; and for this reason, the whole of both may and ought to have a place in the code of the political, or, in other words, the physically coercive law.

It is otherwise, however, in that department of political law which contains the rights and duties obtaining between men in their individual or their social, as distinguished from their public relations to the body politic. Here we find that the code of the State, or municipal jurisprudence, although founded on and perpetually referring to the pre-established code of reason and justice, is not only more limited in the number of its rights and duties, but what is more strange, seems at times even to contradict and violate the superior law. Not only does it omit from its list of rights many which truly obtain between man and man, and which in the court of conscience are daily asserted, as they are daily vindicated both by the dispensations of providence and by the awards of public opinion; but it even allows one man the right to do, and imposes upon others, in so far as they are amenable to its jurisdiction, the duty of suffering to be done, that which in the code of morality is set down as a wrong. Many acts might be specified, which if a man does he is morally censurable, and society will be justified in treating him as an offender, but which do not make him an offender in the eye of the State; nay, which it ranks in the class of virtues, so that it will protect the man who does them, and will even deal with those who maltreat him on

account of them, as if *they* were the wrong-doers. Thus, let a man waste his substance in riotous living, or expend money in upholding a false worship, with the effect, in one case, of disabling him from fulfilling his duties to those dependent upon him, and in the other, of corrupting the morals of many around him; undoubtedly such a man is an evil-doer, and if justice be done, will meet with severe punishment. Yet is he not an offender in the judgment of the State, which, on the contrary, throws its shield over him, and denounces punishment against any one who, by means of the weapon over which it has jurisdiction, shall dare to molest him.

The explanation of such anomalies is seen the moment it is remembered that jurisprudence—the rule of the State's action—comprehends only that part of the moral code which concerns the use of physical force; that the body politic has cognizance only of those rights which entail upon their violator a liability to physical coercion, and that offences of this sort are only a small part of those which men have the unhappy ability to commit. Hence the State, in the *first* place, is constrained to omit from its list of rights all those which men, as single or corporate, may indeed possess, but which may nevertheless be broken without causing injury to their property, or disturbing the peace instituted for the security of their persons, and consequently without inferring against the offender liability to corporeal coercion for punishment or reparation. And, next, to accord to men the right of committing all such violations of duty, that is, all offences which it has ascertained

not to be visitable with retribution of a physical nature. For it justly reckons, that where force may not be used by itself, it must not be used at all; And hence, that those offenders whom it will not coerce with its own hand, it must hold as innocent, and is bound to see that within its jurisdiction, that is, in so far as regards physical power, they suffer no coercion from others.

The observation just made is, I think, of some moment, as serving to explain certain phenomena in politics, and especially the claim to supreme and universal authority, which bodies politic usually make, and which some persons are willing to allow them. In a certain sense, such authority may be truly ascribed to them. As the sole possessor of coercive physical power, the body politic is entitled to take the oversight of the entire condition and the whole actions of men, private and public, and to approve and condemn of all that exists or is done there, according to its political desert. It cannot be indifferent or neutral in regard either to any action, or any saying, or even to the very thoughts of those within its bounds; for either they are (politically) innocuous, in which case it must take care that no man be molested on account of them; or else they are (politically) offences, in which case it is bound to deal with them as delinquencies. Of no one of its subjects, at any time, or in any situation, can it say that it will neither approve nor condemn him, but will leave him beyond law, and permit him to be dealt with at the pleasure of society; for thereupon a private war might spring up, and the whole end of

its institution might be missed. For whatsoever, therefore, the State itself will not coerce a man, in that it must be prepared to do to him the office of a protector from all physical reprehension, and in whatsoever it will not protect a man, for that it must be ready to coerce him. For this reason, the State, taking cognizance of the whole affairs of human society, divides them into those which are lawful, and those that are unlawful; and comprehends in the former, not merely whatever is morally innocent, but also everything which, although morally blameable, it cannot ask its members to lend their physical power to reprehend; in the latter, both all that urgently calls for physical coercion, and also all that it cannot get men to lend their power to defend; exerting for or against each such a degree of force as is required for executing the award of praise or blame pronounced respecting it.

From the principle upon which this allocation is made, it cannot but happen that although truly dictated by moral reasons, it must apparently differ greatly from that which the moral law would make. And, accordingly, those who imagine States to have charge of the entire morals of their subjects, have often been greatly disconcerted by finding among the acts which they repute lawful, many notorious vices, reprobated by all good men; while, again, such as deny that States may properly pay regard to moral qualities in their estimate of actions, have been equally perplexed by finding among those reputed unlawful, some whose public mischievousness seems to consist solely in their intolerable moral offensiveness.

But all such surprises and caprices of allotment are explained and vindicated when the truth is known to be, that the sole effect to which States pronounce any man to be righteous or wicked, is, that he is or is not liable to physical coercion. And when it is farther considered, that there are many actions, at once undutiful and injurious, of which, however, some are in no way chargeable with damage to men's property or harm to their persons; while others, although they do not directly aim at, yet necessarily produce those effects; that as the State cannot ask its members to assist in coercing with physical penalties those guilty of the former, it must account them to be lawful, and as it can as little ask them to protect those chargeable with the latter, it must denounce them; being to neither course moved by a consideration merely of the abstract guilt or innocence of the parties, but of those moral rules which govern the action of force.

Finally, need we repeat, that the limits of the State's jurisdiction in human affairs, although not indistinct to the eyes of the careful observer, have been much disregarded and overpassed by most, if not all, actual lawgivers. Of the two organs by which States declare law, legislatures have been that by which this grave and unhappy fault has been chiefly committed, it being observable that the principles of judicial jurisprudence in civilized communities have been for the most part true, equitable, and liberal, and that almost all law that is otherwise, has been introduced by acts of legislation. This difference has arisen principally from the judges only giving out their law

when asked to do so, and then (the worthy part of them) with minds unbiassed by partiality or interest, enlightened by discussion, and having a near view of the practical operation of their rules. Legislatures, on the contrary, often volunteer to legislate; and in their legislation often obey the guidance, now of some few powerful men, of whom they are the mere slaves, and who employ them to invest their tyrannical desires with the garb of the public will; and now of communities, ill-nurtured, prejudiced, and passionate, and possessed with certain old, natural, and popular, but most pernicious notions of the State being free to will what it likes, universal and absolute in its jurisdiction and prerogative. This fatal idea has been fostered by the supremacy over physical strength, which is their undeniable right, and by their being able through this their instrument to produce the outward conformity of society to all their will, however unreasonable and unrighteous. Confounding extent of material power with extent of right, concluding one to be as boundless as the other, they have set themselves up as commanders in the whole affairs of mankind. Hence States have required that men should account to them for their religious creed and worship, and should take from them rules for their domestic and their social intercourse, for the employment of their mental powers, and of their manual skill and energy. But finding themselves utterly wanting in the superior wisdom which could be the sole warrant for such command, and the intellectual and moral influence by which alone they could administer it, they have sought to make up for

the defect by an abuse of their proper instrument—force. For which end, they have visited those who would not obey their unnatural dominion, sometimes with punishment of their persons, sometimes with the denial of rights allowed to all other men, and sometimes by stripping them of their property, and transferring it, now openly and directly, and now through the disguises and circuities of fiscal regulations, into the hands of those who flattered them by submission. Happily the iniquitousness and mischief of such legislation are now daily becoming more and more apparent. States are perceptibly withdrawing from the domain they were wont to overrun, into their own natural territory. Nor need we doubt that the evil will at length be entirely amended, and that political law will, in all its requirements, correspond to that of reason; in this especially, that it will assert for States no other rights and no larger obedience than are necessary for the execution of the limited function which States are set to discharge.

When, following the principles of legislation which we have endeavoured to trace, rulers have provided that every person under their sway shall have the use of coercive force, on all occasions when it may be fitly interposed, never when it may not, and that within the limits of its fitting employment, force shall act promptly, impartially, and with no greater energy than is adequate to the end, they may boldly affirm that they have fulfilled the main object of their existence, and may justly boast of having led their subjects into the enviable inheritance of CIVIL LIBERTY.

And yet it may easily happen that the lot of such

a people shall after all be little to be envied. Civil liberty, to be a genuine good, must come attended and upheld by two sister blessings. The first is political freedom, without which it is conceivable that there may exist a just administration of coercive power, but it is only an accident, insecure, fleeting, and even while it has place, imparting to those under it, barely one-half of its native virtue, because it comes to them as the boon of an indulgent master, instead of being proudly held as their own noble and inalienable birthright. The second is social freedom ; in the absence of which liberty—civil and political—may indeed be established, but cannot be enjoyed ; for what would it avail a man that he has due control over legislation, and full range of legal freedom, if Public Opinion, which like an atmosphere penetrates through all external barriers to the very mind and soul, should remain corrupt and impure, sending abroad only an acrid and deleterious influence ; if that gigantic and ever active power, which in a cultivated age is more commanding than force itself, instead of obeying the mild and gracious behests of knowledge and charity, should be, as it too often is, the slave of ignorance and prejudice,—illiberal, unjust, cruel, and tyrannical.

CHAPTER V.

OFFICE OF THE STATE IN REGARD TO TERRITORY.

The State's office regarding Territory deduced from the reason for the connexion between them.—The uses of Land twofold, viz. political and economical.—Duty of the State regarding Land as a political instrument.—Propriety of separating the political from the economical uses of Land; and assigning the former to the State exclusively, the latter to private persons.—Evils from private persons wielding the political influence of Land.—Expediency of assigning Land as an economical subject to private proprietors.—Their rights over it limited.—Impolicy of entails.—Law of primogeniture—Reserved rights of the public in regard to Land as an economical subject.—Public uses for which it may be applied.—Land as a source of public revenue.—As a means of maintaining a religious Establishment.—Foundations.—Poor Laws.—Colonization.

It would be interesting and instructive to make an attempt to examine, by the principles explained in the preceding chapter, the course usually taken by States in the several departments of its business. Considering each in its order, we might inquire how its affairs fell under the cognizance and superintendence of the State, in virtue of its coercive function, and how far the provisions which commonly compose the laws of States respecting them, exceeded or fell short of the lawful limits of the coercive authority. In this way we might make to pass in review every-

thing that States do, or with which they have connexion, and examining all from a fixed point and by the same lights, might hope to reduce into the order, dependency, and clearness of scientific knowledge, the confused crowd of vague notions which now fill our minds respecting the body politic.

But any such extensive inquiry is beyond the design of the present treatise, which is simply to ascertain the elements and fundamental principles of a State, and not to present a detailed exposition of its rules. I have, therefore, limited myself to examining, *First*, The subject-matter in respect to which the political union is formed; *Secondly*, The general nature of the function which the union so formed has to discharge; and *Thirdly*, The general nature of the machinery by which it acts in discharging it, or the law according to which supreme power and authority are distributed among the members of the political association. In this examination I have proceeded so far, and when I have gone a little farther, I shall consider myself as having fulfilled the task undertaken, although I shall leave, both in what I profess to do, and what I avowedly leave unattempted, much to call for and reward the voluntary investigations of the reader.

In the immediately preceding chapter we have described, at some length, the principles that guide States in the use of their primary element—physical power. I now proceed to take a general view of those which apply to the other element, namely, the land or territory.

When we examine the codes of civilized kingdoms,

we find that the rights to land vested in private persons are always of political institution or origin. Not only does the State prescribe the forms which those must observe who would acquire right over portions of the national territory, but it prescribes also the import and extent of the right which may be acquired. Hence, to know what is included in the idea of a landed estate in any country, to ascertain the powers which men have over their landed possessions, we must look into the laws which proceed directly from the national will; that is, either into the acts of its Legislature, or into those ancient customs that are acknowledged to be law, because they, equally with positive enactments, are expressive of its will. The reason of this appears from what was formerly stated. Territory belonging to the State as its property, the management of it is a part of the duty of the State as such, and therefore the rules for its disposal can neither be left to be arranged according to the pleasure of individuals, nor yet to be deduced from reason by judicial ratiocination, but must be declared by public consent of the whole members of the State. Accordingly, when the grounds of such enactments are investigated, they will be found to imply that the right and interest to which they give effect, are those of the community, and not of private individuals. Nowhere is this more evident than in the law of succession of landed property. Not merely is it everywhere of State appointment, but it is everywhere regulated by a regard, not to the mere will of the possessor, (which, if he were true proprietor, would alone and always be

consulted,) but to political and other public objects. This dependence of territory on the State was admitted by all civilized antiquity ; it having been then the universal opinion that the land was the property of the Republic. This is the principle also of modern times. The doctrine of the feudal law which prevails in Europe is, that all landed estates are derived originally by grant from, and still hold of, the king or sovereign of the nation. And where more popular ideas are supplanting those descending from feudal times, the tendency would seem to be towards a more vigilant assertion than ever of the public interest in land, and a more careful regulation of its management by its private possessors.

To know, then, what ought to be the laws regarding landed property, we must inquire into the obligations of the State in respect to it. These, again, must be deduced from the grounds and reasons for the connexion between the two. We formerly saw that the relation of property in which the State stands towards land, arose, *First*, From the circumstance that States alone, of all combinations of men in society, were capable of making land yield all its industrial and other physical advantages ; and *Secondly*, From the circumstance, that a certain occupancy of and dominion over it, were necessary to States, for the purpose of controlling the physical force of men ; or, in other words, of exercising their coercive function. A few words will suffice to explain what seems to result from these two bonds of connexion ; and we shall, in the *first* place, treat of the one last mentioned.

I. The grand object of the body politic, which is to unite as under one common will the whole coercive physical power of a large body of men, requires that it should fix on a certain district as the seat and limit of its jurisdiction. Within this sphere it must require every resident to surrender his coercive force to its control; beyond it, it can lay claim to no authority whatever. Hence arises to it a right to regard and employ territory as the medium or link of the connexion subsisting between it as the lord of coercive power, and men as individuals. On the other hand, the rights and duties of individuals as residents upon territory, are the counterpart of those of the State. Bound as social beings to unite with their fellow-men in a league for the rightful use of their coercive power, they, if they would acquit themselves of their duty, must be directed in the choice of their partners in the league by the place of their residence. This it is which, so to speak, individualizes their general obligation, making it to attach to one government rather than another, and which, on the other hand, gives efficacy to their natural right to safety and liberty, by entitling them to the use of the vast power of a government, on all occasions when their right is endangered. Thus, to men in society, territory serves as the index to the social body in which political dominion over them is vested, and from which political protection may be claimed. It is not, indeed, the foundation of the authority of the body politic over its subjects, or of its duty towards them, for this has a moral basis; but it is the visible, material, and really effi-

cient tie that binds each political community together. This it is which at once effectually severs mankind into masses, and thoroughly unites the members of each in a political organization. Their common interest in the common territory is productive of a feeling of mutual connexion and dependence in all who reside upon it; which is the most powerful inspirer of those common feelings that are the sinews of the political union, and which go by different names according to their different manifestations and effects; being called loyalty when shewn in habits of reverence and fidelity to the national Sovereign; patriotism, when producing active and intelligent endeavours to further the true ends of the State; nationalism in the shape of pride in its independence and external glory; and love of country, in the form of a passionate attachment to one's native soil.

As territory is thus the most efficient instrument of constituting and maintaining the political dominion which men may assert over one another, it follows that one duty of the State in regard to it is, to apply it to that use. Territory being the means of singling out the persons over which the State's dominion extends, and of creating in its members that attachment to itself and one another, which are essential to its existence and the execution of its office, no rule can be more obvious than that it should be so managed as to obtain for the public, the whole force of its influence in that way.

To explain in detail the laws which in execution of this duty the State ought to adopt, would require

a long discussion. I shall confine myself under this head to some observations on one point of considerable interest and moment. It is, that as an instrument of political influence and authority, territory belongs to the State, and to the State alone. As a political creature, man is under obligation only to the political union of which he is a member. The practical link of his connexion with it—that which directs him to find who is his lord, and tells the lord that he is his subject—is the territory upon which the one lives, and of which the other is the owner. It is manifest, therefore, that the State cannot, consistently with the end of its being, allow what may be called the rod of its dominion, ever to get into the hands of any other body, foreign or domestic. Whatever right or interest it may allow to others in the occupancy or possession of land, it must be such as shall not confer upon them the political command of their fellow-citizens. Such a tenure of landed property as attaches the obedience or dependence of those residing on it, not directly to the State, but to it through some superior person or some intermediate body, is highly objectionable. For it enables the person, or heads of the body endowed with such political dominion, to exact in the councils of the State, a deference to their individual will, greater than accords with reason, and the real interests of the community. Therefore the sub-holders of the national territory, whether corporations or individuals, can never justly arrogate to themselves, as landlords, the political dominion of other men; exacting, for example, obedience to their orders in political trans-

actions from other members of the State, as the price of their participation in its industrial riches. The very object of the political union is to prevent such ascendency of one private person over another, and to bring all and each into direct and immediate relation in political affairs with the public authority.

Hence the whole influence of territory, in the way of ruling the political (which is the coercive physical) power of men should be absolutely reserved to the State, and things so arranged that every dweller on the soil shall not only look up to it as his direct and only political lord, but be able freely to consult, in his political action, only his duty to the community. This general rule, of which the soundness seems self-evident, does not forbid the formation of provincial or local authorities, whether corporations or single persons, having a certain kind of political control over those living within a specific district; for such authorities may be necessary for organizing the local political force, and as it were, transmitting it forward to the central superior, or they may be expedient as means of accomplishing the business of the community more effectually than if it were all undertaken by the central authorities. In very large nations the vigour of the State can be maintained only by those minor political organizations of its members, which are in it, what the several limbs are in the body of a man, distinct, yet harmonious receptacles and developments of a common life and strength. It is assumed of course, that such local and provincial authorities are kept to their proper purpose, never acquire unnational interests, or cement into a divi-

sive and sectarian organization. When the residents within their bounds are thus perverted in their views, and look to the local authorities as their ultimate rulers, things must be pronounced to be greatly disordered. The disorder, though not so flagrant, is equally real when it is a private party who is intercepting the dependence of the subjects, when it arises from individuals having acquired such a tenure of any portion of the national domain as enables them so to command in political affairs the sub-residents and cultivators, as that the State, in order to secure the obedience and loyal support of that circle, is obliged to humour and propitiate the intermediate authority that controls it. With whatever pretences it may be excused, all power of that sort is in its own nature an evil, although peculiar circumstances may at times cause it to operate for good. The State has improperly vested in hands not its own, its instrument of dominion, and as a consequence, not being as it ought to be the direct and sole object of political attachment to its members, must be turned more or less in its public policy from the pursuit of general to the pursuit of private or class ends.

But it so happens that nothing is so liable as territory to be the creator of such disorders. Besides being a channel of political influence, the land is the main source of man's food, and for this and other uses indispensably necessary to him. Nor perhaps should we err if we conclude, that it is to its economic qualities that it owes its political power. Now, while to extract its political virtue from it, reason dictates, as we have seen, that it should be wholly

in the hands of the State, reason dictates no less clearly that its industrial and physical uses can be enjoyed, only by the greatest part of it being placed immediately under the control of individuals. As the proprietor of territory, the State is bound to secure to its members and subjects the enjoyment of the produce, and other physical advantages, dividing these among them upon principles of equity. This may be done by parcelling among its families those portions of the land not required for public purposes, and which, to yield their proper fruits, must be secluded from common occupancy. Such an apportionment, accordingly, either takes place in the natural course of things, or is made by public convention. Thereafter individuals or families are vested with what is practically the ownership of their particular lots. But, in reason, this interest is limited by a regard in particular to its object or end. Consequently it covers only its industrial capacities, and the owner has no right to the political influence derivable from it. On the contrary, he is bound to leave this to operate in favour of the State or public community which is its just owner.

But men will be obedient to whomsoever they think it their present interest to serve, and he who has the disposal of the fruits of the soil on which other men dwell, may, in general, command both their bodies and their souls. From this cause a species of personal dominion has, in general, been attached to territorial proprietorship ; and the holders of land, claiming the vassalage of those living under them, have asserted a superiority over every other

order of men, and been allowed a weight and consideration in the State, much beyond their due as individuals. Speaking theoretically, we must deny their title, because the right to control its occupants in their coercive or political relation, cannot be conceived to have been surrendered to the persons among whom the land was divided. They got only its industrial value, and not a lot of power in the State; and in a question with it, or its members, their right can never be pleaded higher. The political incidents of territory are not theirs: On the contrary, they are in duty bound not to claim them, personal dominion being, by the law of society, assigned to the State as its exclusive possession; this being necessary for the proper discharge of its high function of putting physical power under law.

To allow of any such political use of territory by the private holders of its lots, is not merely to depart from the just theory of the political union, but to open the door to a host of public and private mischiefs. Under such a system, we may expect to see springing up the transcendent nuisance of sectarian legislation and local tyranny; portions of the country laid under rules that nullify or reverse the general laws which the common legislature had promulgated. This evil was at its height in the days of feudalism. The great lords then possessed within their estates a power and jurisdiction which made each the real sovereign of his vassals, and enabled him to command their services at his pleasure, now in aiding, and now in thwarting the measures of the national monarch. Nor is the evil, though now much modified

and disguised, yet wholly abated. On the contrary, it still sometimes displays itself in very offensive forms. One flagrant instance occurred not long ago in England, where a nobleman, the proprietor of a whole parish, issued an order, which, in effect, forbade the celebration of any worship within it, save that of the Established Church. This was tantamount to a repeal of the English Toleration Act within that portion of England. Other instances of the same abuse have often occurred in this country, and it has recently been exhibited on a large scale in Scotland, in reference to the erection of Free Churches. Were so monstrous an usurpation to be imitated by others, the country might ere long present a spectacle similar to what appeared in the barbaric feudal times, being broken up into a number of separate jurisdictions, each having some customs and laws peculiar to itself, and proceeding from the will of its petty tyrant. Even when the evil has not reached this climax, it is still great. It affects the legislation of the State itself, making it partial and regardless of the general good. When a man is able to direct howsoever he pleases the political behaviour of any considerable portion of the community, as his non-concurrence in any public measure might defeat it, or at least greatly weaken its efficiency, he is in a situation to command peculiar attention and deference from the State. Perceiving this, he will naturally bargain for some personal advantage, as the price of his agreement in the measures of government, and thus public power will be turned more or less to the furtherance of private and sectarian, instead of public and general interests.

Nor does the mischief end in merely perverting the management of the public power. Wherever the political influence of territory is wielded by individuals, its industrial advantages are not enjoyed in their full measure. It seems evident that the industrial resources of the land are then likely to be most fully drawn forth, when those charged with the office of educing them, can turn it to no other use. This is especially evident in regard to its political influence, of which its industrial owners must be carefully deprived. For those two uses, the political and industrial, seem to be inconsistent with each other; at least a private possessor of land can draw from it the full amount only of one of them at once. The aim of the mere cultivator of land is to make it yield the largest possible quantity of produce at the least possible expense; for which purpose he follows, among other plans, that of employing as few labourers as possible, and those chosen for their agricultural skill. The object of the political lord is to have the largest possible clan or following, bound to him by the most slavish ties: because the amount of his political importance is mainly determined (as will appear more clearly hereafter) by the amount of physical power he commands, and the degree of his mastery over it. Consequently, although his interest in his landed estates does so far concur with those of the simple agriculturist, as that both desire the largest possible produce, yet the means to which, for his political ends, the political lord must resort, tend to prevent him from obtaining it, as he cannot put his estates under proper management: his political

ends requiring that he should crowd them with hereditary dependents, for whose ignorance, indolence, and want of industrial ability and enterprise, he is compensated, in barbarous times, by their skill as warriors or robbers, and in a civilized age by their pliancy as tools.

We may conclude, therefore, that those portions of its territory of which the State vests the occupancy, and (in a certain sense) the ownership, in private persons, single or associate, it ought to strip beforehand of all but their industrial value, retaining as its own exclusive inheritance their whole political influence, and reducing them as private possessions to the condition and estimate of mere commercial commodities. In short, the true policy as to land is, to disjoin its physical uses from its political influence, and to assign these to separate parties, the State enjoying all the latter. For just in proportion as such disjunction takes place, will the utilities of territory be obtained. Power will be transmitted from each subject to its proper owner—the State—directly and in a less partial and broken measure, while wealth in larger quantities will reward the industry of the people. Society will run less risk of having the will of a class or of an individual substituted for that of the community, in the management of the national force, and at the same time be more assured of having the national domain laid under a thorough and skilful cultivation.

II. The remarks just made have nearly anticipated all I have to say on the second branch of the function

of the State in relation to land, which is, as its proprietor, to provide for its being applied to its proper industrial uses. This topic properly belongs to the political economist. That view of the science of politics to which we have confined ourselves, conducts us on this subject to little more than the general conclusion, that the State ought to adopt whatever system of management is best fitted to obtain for mankind the economical benefits of land. It does not teach us what that system is; nor indeed does it interfere with it, further than to forbid the introduction into it of any rule or practice inconsistent with the efficient organization and free action of the State as a coercive society.—The general system hitherto adopted is well known, and seems in the main free from objection. It has been customary to retain in the hands of the Sovereign, or of inferior public officers or corporations, the portions of the national territory needed for public uses, whether local or general, and to allow the remainder to become the private property of individuals. In these the State vests the possession and usufruct of their lots, *permanently and indefeasibly*, unless the public service should demand their reclamation from the condition of private property, in which case it reserves right to resume them for an equitable consideration; and *exclusively*, except in so far as a share of the public expenses may be levied from them. This permanent and exclusive appropriation of land to individuals has been frequently accompanied with unjust and mischievous powers over it, and an odium has been created by its abuses against the right itself. This

has led some men to contend that the industrial management of the national territory and the distribution of its produce, should be a part of the public business. Of late, a similar opinion has become somewhat popular, in regard to moveable property also. The extreme inequality of man's condition as regards riches which the existing state of society presents, the superabundant affluence of some, and the miserable indigence of many, is a spectacle which no one can contemplate without regret and condemnation. Great and lamentable as it is, the evil, in the opinion of some, is incorrigible, nay, must increase so long as society obeys its present rules, and States maintain the right of property on its present footing, securing to every man the exclusive disposal of all he has produced by his own labour, or has lawfully acquired from another. This right, apparently so equitable and useful, they condemn as the necessary cause of the prodigious evil of industrial competition, of that unfriendly struggle with each other for subsistence and wealth in which mankind are everywhere engaged; a struggle in which every man looks to ruining his neighbour as the means of success, and of which the final result is, to corrupt the victorious few by repletion, and to debase the vanquished multitude by want and misery. To correct, and in the end, expel from society those hideous evils, they advocate a new organization of industry. They would substitute the principle of association and co-operation for that of individualism and competition in industrial pursuits; and in regard to the produce of labour—the principle of common for that of individual right.

A difference, however, exists among the promoters of the system respecting the proper rule for distributing the fruits of labour. One party contends for a graduated tariff of salaries—a division proportionate to the social desert of individuals, maintaining that as men are unequal by nature, a corresponding inequality should be observed in the allotment of social honours and enjoyments. Another party contends for a rule of equality, their opinion being that although every man is bound to exert his whole industrial energies and skill in the service of society, no man is entitled to a greater share than his neighbour of the fruits of industry. More lately a still bolder innovation upon the existing system has been proposed by a man whom the recent French Revolution has invested with European celebrity. M. Louis Blanc, while accepting the rule of equal wages or salaries as expedient in the state of transition from the old to the new system, announces the just rule to be, that a man's industrial duties are in proportion to his aptitude and his powers, his rights over the produce of industry, in proportion to his wants.[1] These differences are important. But whichever

[1] In an address delivered by him at the sitting of the *Commission de Gouvernement pour les Travailleurs*, on 3d April last, he said, " Nous avons donné tout-à-l'heure la vraie formule: *que chacun produise selon son aptitude et ses forces, que chacun consomme selon ses besoins;* ce qui revient à dire que l'égalité juste, c'est la *proportionnalité.* Mais quoi! cette proportionnalité, elle existe aujourd'hui; seulement c'est au rebours de la raison et de l'équité; car, au lieu d'être rétribué selon ses besoins, on est rétribué selon ses facultés, et, au lieu de travailler selon ses facultés, on travaille selon ses besoins!"—See the *Journal des Débats*, April 8, 1848.

rule shall be preferred, it is evident that in the social system where it prevails, the sense of self-interest, hitherto the main-spring of human industry, must be greatly blunted, if not entirely deadened. Industry, therefore, must there languish and decay, unless men are inspired with a love of labour of which we have as yet had no experience, or the place of the abstracted stimulus be supplied by a system of social police so strict and constant as to reduce every man into a machine or slave of the community. And after all, the results of the severest discipline would be but a poor compensation for the sacrifice of freedom and dignity it would cost. Practically it would be found possible to exact from men only a very low amount of daily labour, no higher indeed than is fitted to the capacities of inferior workmen, that is, of the majority. While, to maintain the numbers of the population within the limits of subsistence and comfort in a community inert and stationary, measures of constraint and repression of which the bare thought is frightful, would probably become indispensable.

These remarks are made on the supposition that men are to continue to be in future as selfish, vicious, and foolish as they have been in past times. Nor we believe, will their justice be disputed even by the advocates of the new system, upon that supposition. For as part of their system, and indeed necessary to its success, they propose a change in men's disposition and habits; to be wrought either by some plan of education, or by some other social influence not clearly defined, but of which the anticipated effect is to make men regard their duties as pleasure. If

this wonderful revolution takes place, whether the system projected by those who expect it will be adopted, is perhaps problematical. One result, however, is certain, which is, that States will cease to exist. There will be then no culpable breaches of duty—no crimes to punish, and no injuries to repair. Coercion will therefore have a perpetual end, and that elaborate economy of law and force, which now constitutes the body politic, will be known only as a form of antique barbarism.

But the present inquiry relates to the present condition of society, to which States are necessary. Without, therefore, dwelling upon theories which suppose a totally different and hitherto unexperienced state of things, we proceed to remark, that the right of private property which States now uphold, by securing to every man the disposal of the produce of his labour, seems to be exactly suited to the present development of human nature. As man is now constituted, no other rule would be just or expedient. At the same time, while the system of individualism in industry which that right fosters, is just, that of associated industry is no less so ; and, consequently, while the State recognises and secures full liberty to the one, it should accord equal protection and privilege to the other. Thus, for example, if the laws of this country discourage, as they are said to do, the system of associated labour, by its law of partnership being defective, it ought forthwith to remove the discouragement by amending the law. In like manner, if the law of inheritance, either in so far as it transmits the property of a deceased person to his

relative, however distant, or in any other way, extends the idea of individual right beyond what equity and expediency dictate, it ought to be altered. For the plain duty of the State is to adapt the laws of the province of which it has charge, to what experience proves to be the most just and expedient rules of social life.

There is little doubt that the existing system of laws will be found, as society advances in civilisation, to be erroneous in many points, and defective in more. Meantime, however, there seems little reason to complain of its general principles in regard to the matter immediately under our consideration—the management of land. More especially, the system of private property in land which it sanctions, seems clearly preferable to any other mode of industrial management, and in particular to its being managed by the public authorities. For the State to bestow the ownership of a lot of the National territory on a private person, is not unjust to the rest of its subjects. When the State itself undertakes the first apportionment of the land, it is bound to divide it equally and impartially among all its members. But the allocation once made, the State will do its duty if it shall thenceforth maintain the right of the private parties to their several lots, provided only it so regulate the right as to give a guarantee to society that the owners shall turn them to their proper use, namely, the industrial cultivation of the land. For when that is done, the produce, and other physical advantages of the soil, are made as accessible to the whole members of the State, as they would be if the State were

to hold it in its own hands, working it by its own officers and servants. A private owner, whose right is so regulated, will always be ready to part with the produce to others on the same terms which the State would demand, namely, an equivalent value, either in other produce, or in labour, or in some other shape. The rest of the community, who are not land-owners, are in no worse situation than a different arrangement would place them, nor are the land-owners unduly favoured. But while a wisely planned system of private property in land is thus unobjectionable on the score of justice, it avoids the enormous evils, economical and political, which experience shows to flow, and indeed to be inseparable, from the State's undertaking the active duties of landlord. Of these, I may mention, *first*, An unskilful and expensive system of cultivation, regardless of the varying wants of society, presenting, in short, all the defects that must exist where there is neither any incentive nor any room for competition and enterprise. *Secondly*, The political evil of peopling the land with a race of cultivators, all living on the same level of humility or poverty, a continuous herd, rather than a people. It seems clear that the best economists of land are the class of farmers, that is, men who live by employing their capital in its culture. Now such a class must consist either of private proprietors themselves, or of persons holding under them as tenants. On the one hand, it is only such proprietors who perceive and are so moved by the advantages of investing capital in agriculture, as to invest their own, and to encourage other capitalists to invest theirs, by allow-

ing them a remunerative share of the produce. On the other hand, it is only by divesting the Rulers of all personal interest in the industry of the land, that they become qualified for dispensing justice in such affairs, and afford to proprietors, farmers, and labourers, the protection against wrong, which is essential to the growth of a class of agricultural capitalists. We may see in the Asiatic empires how low is the condition of the agricultural class, when it has any connexion with government, of the nature of that of landlord and tenant. It is true that the State should so settle the tenure of land as to prevent its immediate occupants from being politically dependent on any superior individual proprietor. But to effect this by reducing the cultivators of the soil to the condition of servants or slaves of its own functionaries, is to go a step farther, is not simply to free them from the unlawful political control of one another, but to fall into the other extreme, of making their tie to itself no longer a rational and moral sense of duty and interest, but a personal servitude founded on mere bodily terror, or blind habit, or the senseless cupidity of hunger. The result would be, that the heads of the State would become absolute in power, and keeping the rest of the community at the lowest point of depression, would expend upon their own pleasures and interests, the whole revenues raised from the common possession. It need scarcely be added, that in a State thus constituted,—with an agricultural population, but no landed capitalists,—there probably would be few or no capitalists of any other kind; both because of the general poverty, and of the insecurity

to wealth, characteristic of absolute rule. And thus the community would want what is essential to any progress in civilisation, a class of persons exempt from labour.

For these reasons, and many others which might be mentioned, we conclude in favour of a territorial system which vests in private persons a permanent and transferrible title to the usufruct of land, and under which the rent, which ere long arises, instead of going into the coffers of the public, is a private commodity, capable of being bought and sold. It is indispensable, however, as already remarked, that this right of perpetual usufruct shall be made to serve its true end, which is purely industrial and not political. Now experience attests that, in order thus effectually to limit it to this use, two practical provisions are necessary; namely, one to prevent its being engrossed in large shares by comparatively few proprietors, and one to allow of its being easily transferred from hand to hand. The possessor of a great estate is the patron of a large number of men; and if his relation to them is not of recent growth or precarious duration, but has been borne by his ancestors, and will descend to his children, it naturally engenders a habit of subjection in them, and a habit of rule in him, which converts him into their real lord, and reduces their feeling towards the body politic in which they live, to a secondary and feeble emotion. No such evil can truly be ascribed to small estates. It is true that even small proprietors must have one or two territorial dependents, and that over these they may possess a degree of political control.

It is true also that all such dominion, when vested in private persons, is objectionable—whether it be that of the feudal baron of the middle ages, who could lead his vassals to do battle with the Sovereign, or that of the modern landlord, who drives his tenantry to the polling-booth to abuse the trust reposed in them by the country. But, in reality, it is only that dominion, of which the subjects are somewhat numerous, and the nature pretty absolute, that is felt to be a troublesome and mischievous obstruction to the supremacy of the general will in legislation and government. Now, such dominion is not possessed by any one small proprietor singly ; nor is it likely to be created by the combination of the class for selfish objects, because their numbers are usually so great, as at once to make any close confederacy nearly impracticable, and by the small share of advantage which it could bring to each individual, to take away all motive to form one. Thus prevented from deriving any gain from land, save as a means of subsistence and wealth, they turn their whole thoughts to making the most of it in this way ; and, accordingly, it has been found by experience, that small proprietors are of " all improvers, the most industrious, the most intelligent, and the most successful."[1]

To break down the national territory into sufficiently small parcels, and to impress upon these the character of a purely commercial commodity, nothing farther seems necessary than to give ample facility to the selling and farming of land, and to consult in

[1] Adam Smith.

the rules of its descent the equities of the family relation. "When," says Adam Smith, "land, like moveables, is considered as the means only of subsistence and enjoyment, the natural law of succession divides it, like them, among all the children of the family; of all of whom the subsistence and enjoyment may be supposed equally dear to the father. This natural law of succession, accordingly, took place among the Romans, who made no more distinction between elder and younger, between male and female, in the inheritance of lands, than we do in the distribution of moveables. But when land was considered as the means, not of subsistence merely, but of power and protection, it was thought better that it should descend undivided to one."[1] Hence we find in the feudal system, the design of which was to create a dynasty of political lords, *first*, the law of primogeniture, to prevent great estates from being broken up by succession; and, next, the law of strict entail, to prevent them from being parcelled by alienation. The total abolition of entails, and perhaps the modification of the law of primogeniture, are measures required of the State which would adjust the settlement of landed property to the just uses of the subject. For to prevent land from acting as the instrument of an overbearing power in individuals, and to reduce landed proprietors to a level in political affairs with other persons of equal intelligence and energy, is necessary at once to a wise administration of the

[1] Wealth of Nations.

public power, and to the fullest development of the national resources and wealth.

At the same time, as we have already said, it is only when individual power of this illegitimate kind is very absolute and extensive, that it is practically pernicious, especially to a large State. And in connexion with this remark, it may be proper to add, that the extent to which accumulations of land in single hands ought to be prevented by the laws, must be regulated by the circumstances of each nation. Where the population is very numerous, and the territory extensive, accumulations which would be dangerous in a small State, may be innocuous or even advantageous. In the little republic of Glarus, the land of one dying without son or daughter, is divided by the government in small portions among the poorer citizens. The reason is that the balance of equality, by which its government is adjusted, may not be destroyed by individual citizens acquiring through inheritance an unusual amount of wealth and so of personal authority. But in a great nation no such evil can be dreaded from the ordinary laws of inheritance, perhaps not even from the law of primogeniture as it exists in our country. On the contrary, it is questionable whether such a law is not on the whole necessary to the maintenance of the community in political unity and strength. When there is a multitudinous population diffused over an extensive territory, and not as yet so universally enlightened and public-spirited as it is desirable it should be, and as men are capable of becoming, if its social condition is that of one uniform and, through the breaking up

of estates, somewhat low, level, there is a danger that it shall become dislocated and disorganized, and from disunion liable to turbulence, and an easy prey to demagogues or to despotism. In such a community something resembling points of local union all over the country would seem to be useful, for the purpose especially of maintaining the political influence of the country population against the domination, now of the large towns, and now of the central government. Persons or families, capable of leading the rural, or provincial population, placed in a condition such as to imbue them with political information, and inspire in them public spirit and independence, seem there to be called for by public utility. The custom of primogeniture for the descent of landed property, would probably insure the existence of this useful class of citizens, while in a great nation it would not confer upon them any control over their neighbourhood that was politically injurious. There, therefore, that custom, or even perhaps a modified system of entails, seems a superior policy to that which produces a community of mere peasant proprietors. This, at least, is certain, that any such measure as the compulsory partition of estates, which is now the law of inheritance in France, would be a great political evil.

It remains to say something respecting the purposes of a directly general or public nature, for which the State is bound to provide by appropriations of the territory or of its produce. And here I shall dwell only on some points that seem to require explanation.

I may therefore pass without remark those appropriations in which the State manifestly proceeds

upon the principle of setting apart to a common or public use, those portions of the territory which, in private hands, would yield only part of their advantages. Of this nature are navigable rivers, and their banks, and large waters of all kinds, and also those portions of the soil that are best fitted for connecting the points of the country by roads, canals, bridges, or otherwise ; the places that are suited for posts of defence, &c. In securing these and similar parts of its territory for such purposes, and farther, in putting them, and indeed the whole land under such general or local regulations as shall make it in the highest degree auxiliary to the economical convenience and physical wellbeing of the community, the State not merely acts within its province, but fulfils an imperious duty—a duty of which we may remark in passing, States have been in past times too neglectful, more especially in regard to populous municipalities, which, abandoning them wholly to private management, they have suffered to be converted into public nuisances, generators of disease, and nurseries of pestilence.

It is, perhaps, more necessary to explain the ground on which it proceeds, in taking, as it sometimes does, land out of the possession of a private owner, and giving it to a local society or company. This takes place when it appears that the land is capable of some application conducive to the physical comfort and wellbeing of the neighbourhood, but to which it will not or cannot be put by its private possessor. In such a case, the State interferes, and, on the condition of recompensing the private occupant for the

value of what he loses, authorizes it to be taken from him and applied to the uses of the community or public. Now, it is to be remarked, that if the private possessor were the real and paramount owner of his estate, this forcible abstraction of it from him would be unjustifiable, however large the recompense he might receive. For the proprietor of a thing is entitled to the thing itself, and no extent of reparation will prevent the act of taking it from him against his will, from being a wrong. The explanation and justification of these transferences is, that the State is the true owner, that as such, it is bound to apply its possession to the best use of which it is capable, and that finding reason to conclude on a comparison of the possible applications of any portion of the land, that it would do better service in the hands of a multitude, than in that of a single person, it is bound to allocate it accordingly.

In such appropriations as those now referred to, the State acts clearly within the line of its duty. Its aim is to obtain for society the full physical or economical uses of the land. Other appropriations there are to persons or bodies called public, or to purposes of a public nature, that are of a different, and (some of them) of a more questionable character. Rights over, or an interest in the land, or parts of it, are conferred on certain persons or bodies, in respect not of any new service to which they can put it, but of some claim to it in themselves, or of some service which they do for the public. The land is no more and no otherwise economically useful than it would be in the hands of any other persons: and what the

State gains by granting them a right over it, is no increase in the amount of its fruits, but simply the existence of a particular class of men, and the purchase for society of some social benefit.

The first of such rights over landed property which I shall mention, is one which exists in most countries in the form of a tax on the proprietor, or a reserve from the produce of the land in favour of the State itself. This land-tax or reserve is applied to defray the general expenses of government. It has been maintained by some, not only that such a tax is just and within certain limits expedient, but that the land is the proper source of public revenue, and that the whole income derivable from it above the expense of the labour and capital employed in cultivating it, justly belongs to the public, and ought to be levied and appropriated to public uses. The discussion of this question is not necessary in the present inquiry; and I content myself therefore with merely stating the existence of the opinion, and with adding my concurrence with those who think that the policy of deriving the public revenue entirely from land, if it were compatible with equity, which seems doubtful, would be inexpedient.

There are other appropriations either of the land itself, or of a portion of its produce made in most nations to persons or institutions not strictly speaking State officers, or truly national in their character. Of this species of public use of territory, the most noted instance is the support of the Ministers and the offices of religion. From very early times States have been in use to reserve to the Ecclesiastical Body

a share of the national domain. We have an instance in Judea, where to the Levitical tribe, whose business was religion, law, and literature, were assigned for their maintenance certain cities, with the surrounding land, as well as the tythes of the lands of the other tribes. A late distinguished writer has endeavoured to deduce such a provision from the fundamental Idea of a State, which, he maintains, includes in it what he calls a Church. He lays it down, accordingly, that Constitutions modelled upon that Idea, must reserve a portion of the land for the use of the *Clerisy*, a term under which he, improving the hint furnished by the nature of the Levitical tribe, comprehends not ministers of religion only, but the professors of all sciences, whether moral or physical, and of all the intellectual arts ; or, in other words, all those whose pursuits concern directly the intellectual and moral, that is, the improvable part of man's nature. These, he contends, must be exempt not merely from the labour necessary for the production, manufacture, or distribution of the articles required for man's physical life and comfort, but also from all anxiety about securing to themselves a due share ; and this exemption the State is bound to provide for, by reserving for their enjoyment a certain portion of the produce of the lands in the hands of the agricultural class.[1]

Confining our attention to religion and its ministers, as the most interesting of the topics comprehended in this theory, I would remark, that the Eccle-

[1] Coleridge in his Treatise entitled, *Idea of Church and State.*

siastical Society is undoubtedly a body, of which States are bound to foresee and provide for the existence. This society is in its nature perpetual and indestructible. It is founded upon the least transitory and most universal of the relations which men sustain. And whether it be viewed as a school of moral discipline, wherein men govern themselves by a holier and more perfect law than that of jurisprudence, or as a spiritual kingdom, wherein they live under the immediate rule, and hold direct communion with their true and supreme Lord and Lawgiver, the Church must be acknowledged to be of all societies the highest and most excellent; the foundation and the crown of all; the earliest, the most comprehensive, and the last of all. Nor is it a mere mental or spiritual bond by which it unites men, as if religion were nothing but a "Divine philosophy in their minds." This society has its visible and material parts and appurtenances; it divides men into rulers and ruled; it puts them under a law of external behaviour; it directs them to rear temples in which its offices of worship may be performed, and in various ways to appropriate to its uses a large share of their worldly possessions. It cannot, therefore, be doubted, that States are bound to recognise religious associations as legitimate and useful, and to enforce by the ready aid of their power, all rights of a nature to be vindicated by that instrument, which any such society may possess naturally, or may acquire by convention, either over the State and its property, or over other persons or other external things.

So far all are agreed. But at the next step a great difference arises.

Some maintain that it is the duty of the State as such to profess religion and "have a Church;"[1] and, consequently, that the Church has right to a perpetual maintenance out of the national fund. Perhaps we might dismiss this theory at once, as having for its basis a mere cloudy phrase. I do not know what is meant by the State "having a Church," any more than I should, if the same words were used regarding a private person. As a religious being a man may be a member of a Church, but "have a Church," as a sort of possession distinct from himself, he can not. So it is with the State. To say that it should "have a Church," can only mean that it is either a Church itself, or is along with other States or persons, a member of a Church. But when we reflect that a State is nothing but a number of individuals united in understanding and will respecting certain specific objects, we shall perceive that to be either a Church, or a part of one, its members must be bound to be of one mind in matters of religion. But however desirable and obligatory religious unity is, it is manifestly not required from men in their character of members of political society. And if the belief in one and the same religious creed is not a term of the political covenant, it is equally manifest that the State is not a religious society or Church; that is, a body cohering by a tie of religion, and qualified to profess a faith.

[1] *Vide* Mr. Gladstone's book entitled "The State in its relations with the Church," *passim*.

It is instructive to remark the unsatisfactory result to which we should be led if the contrary were true. If we should grant an agreement in religious principles to be implied in man's political relation, we should still possess no adequate foundation for a national endowment of the Church. Because the same reasons which taught us that religious unity was necessary, would equally prove that the unity obligatory on men as members of a State embraced only the first elements of theology, the simplest and, so to speak, the rudest doctrines. Let it be recollected that the State is a natural society, founded on and modelled after the principles of morality which have their ground in the constitution of all men, and which, because the reason of man may discover them, are obligatory upon men at all times and in all places. If, then, it were the duty of the State, as such, to make a profession of faith, it would only be a profession of such doctrines as were disclosed by the light of nature, and the nation, in its character of a Church or religious society, would find itself debarred from proceeding any farther than to the acknowledgment of the elemental articles of all religions—the existence of a Divine Providence, and the duty of adoration.

For the same reason it would require to impress upon the worship celebrated by the national priesthood within the national temples, the same simple, vague, and, so to speak, catholic character. For a worship of this kind only, would accord with and reflect the conscience of the worshipper, that is, the nation. Any of the more specific creeds, or more

definite formularies to be found prevailing in society, it would be precluded from adopting, because none of these can be learned by consulting nature only, but their warrant is always some supernatural communication, real or supposed, improving upon the dictates of natural reason, and revealing things beyond its ken. To a belief in the verity of such communications, or of the things they communicate, no man, however, is bound to his fellow-men, *in his character of member of the State.* Consequently, such belief never can be lawfully or honestly asserted by the nation as such. A majority of the nation might indeed *will* to declare it; but inasmuch as mere will never makes right, and no majority is entitled to say or do for the nation, that to which its members are not bound by the nature of the institution, such a declaration would be unauthorized and unwarrantable, and would, in reason, bind neither the nation nor its members, as such, but simply the individuals from whom it emanated. Thus the religious creed of the nation never could advance beyond the doctrines of mere natural religion, and the nation, as a worshipper, could never conscientiously offer, as for itself, any but a merely rational, and (so to speak) heathenish worship.

If finding, however, as it ere long would, that the supernatural lights hung out in the region of religion which, though it could not regard them, its subjects as individuals were eagerly following, had rendered that neutral and catholic worship, to which alone it was competent, distasteful and offensive to them all, and had at the same time broken them into an infinite

diversity of religious sects, and if, for that reason, unable to act upon its own idea of a Church, it should resolve still to maintain an endowment for religion, but to settle it upon some plan of which its members could avail themselves to support their respective faiths, I do not see what other plan it could, in justice, adopt, than that of opening the endowment to all religions equally. Unauthorized to decide that the faith professed by one of its subjects was better than the faith professed by another, it would feel itself obliged to support all if it supported any. And in the dilemma, in which its own incompetency to dogmatize, and the religious fervour of its subjects placed it, it would be driven to a compromise between its own duty and their wishes; by making, as for itself, a national provision for Divine worship, but declining, in deference to them, to say precisely what was and what was not religion. In the end it would hold itself entitled to deny a share of the national provision to no religious doctrines or ceremonies, however erroneous, stupid, or bizarre they might be, provided they did not involve in their publication or practice, a violation of those social rights, private or public, which States are set to vindicate.

It would appear, then, that the legitimate result of the theory which represents States to be religious societies, and as such, bound to profess a faith and worship, is to land us in a religious polity which probably no people would tolerate, and in which Deism, as the creed of the State, or public person, and a thousand other forms of faith, as the creeds of the several private persons, its members, would all be

maintained by a public endowment. Happily the theory which has such a monstrous consequence, misrepresents the relation of States to religion. In as much as they are moral institutions, States may be said to be religious societies, that is, they are responsible to God for all they do. But they are not religious societies in the sense of being charged with the duty either of social worship, or of the moral training of mankind, or of the promulgation or diffusion of religious truth. These several offices towards God or men as religious, are indeed incumbent on men; and to discharge them properly, men must confederate; but the union for this purpose is not the State but the Church—a society which, as it is distinguishable from the State in the eye of reason, so it never can be in practice blended or confounded with it without producing social evils of enormous magnitude. To religion, therefore, States really bear no different relation from that which they bear to the many other things which are causes of social organization among men, and give rise to conventional rights and obligations affecting each others persons or properties. They may take no leading, initiative, or authoritative part, but are bound to allow their subjects the same liberty of action for the ends of religion which they do for any other of their most favoured pursuits. They are bound also to vindicate, when violated, whatever special obligations in reference to religious concerns one man may incur to another, if they are of the kind for which coercive power can act. The doctrines of religion, and its rites and ceremonies, with all that

is to be done or suffered in its service, men must settle either privately, and as between God and their individual consciences, or if publicly, then in their Churches, but not in the State.

There are some, however, who place a national provision for religion on the footing of a proper State institution, contending, that whoever undertakes to punish offenders, is bound to instruct them in morals and religion; for those alone are criminal who knowingly violate right, and if they are ignorant, they are not guilty and not punishable. Hence they infer, that States should maintain an establishment of churches and religious teachers, as an appendage of their coercive institutions, and in order that they may teach subjects their duty, which is an indispensable preliminary to punishing those who violate it.

The same argument is frequently used for a National Establishment of Education generally. That to educate a man, (whether we merely give him the art of acquiring knowledge, or in addition, knowledge itself, or, still farther, embue him with sound principles, and train him to right habits, which are the genuine fruits of knowledge,) is to lessen the chances of his committing crime, and make him more useful to society in a thousand ways, no one doubts. The question of difficulty is, whether the task of educating falls upon the State? And notwithstanding the vehemence with which, in these days, many honest friends of mankind urge it upon legislatures, and upbraid those States by which education is not undertaken, I confess myself to incline to the opinion that they have no right to undertake it.

In the first place, the State is so far from being bound to instruct men in their rights and duties, that it is founded on the assumption, that they know these already. The office of the State is to coerce offenders; it is first called into existence by men's experience of offences, and when instituted it settles, in its assemblies, or by its leaders, what are the actions it will deal with as such. But offences are violations of rights; and if rights were unknown, so would be offences. The very substratum of a State, therefore, is man's knowledge of the relations of right; and so strong is the presumption against every man that he individually possesses the knowledge, which pervading the community generally, has led them to the formation of a State, that if he shall do any of the deeds known as offences, nothing but proof that he was, in so doing, destitute of reason or free agency, will save him from the fate of an offender. If this general presumption were not well founded and fair, the only alternative would be to suspend the action of the State against offenders, upon an inquiry into the moral condition of each individual when in the act of offending. The erection of a public institution, in which its members might, if they pleased, acquire a full knowledge of their duties, would not suffice to make them amenable to punishment; for that an institution for instruction exists, as little proves that all have been instructed, as that an act is a crime proves that every man knows it to be so. It might still be true after a public provision for education had been made, that the persons charged before the tribunals with crime

were as ignorant as if there had been no such institution.

Not only, however, does this ground fail, but it would seem that the State is excluded from the office of instructor. The Author of nature has assigned it to another. Of course, the subjects of instruction are the young. But moral authority is the main instrument of tuition of the youthful mind, and this belongs, not to the State, but to their parents. To their parents alone is given the title to the faith and obedience of the heart and mind, which are, in youth, the chief agents in moulding the character. The religious creed of children, their moral principles and habits, the early direction of their intellectual and physical faculties, come all within the scope of the parental power. And, having been placed there by the hand of Providence, I do not know what right men have to disturb the arrangement.

But the parent may fail in the duty to his children which that power lays upon him ; he may neglect to instruct them. Granted. But what follows ? That, therefore, the State should, as it were, sequestrate the whole parental authority within its bounds, and become itself the universal instructor ? Undoubtedly not. At best it would be entitled to educate only such children as had neglectful parents. But is this neglect an offence of which the State has cognizance ? Not, if we have rightly determined the characteristic of its class of offences to be some ascertainable injury to person or property. Here there is none such. At best, it is but withholding from the child a certain amount and quality of general knowledge. It may

not be even so much ; for, upon examination, it will be seen that, in many cases, all the supposed neglectful parent is chargeable with, is merely that he does not follow the customary course of tuition. In the end, however, his child may grow up to manhood as competent as is the generality of his class for the part of a citizen.

The case is altered, if we suppose either the absence of parents and other private guardians, or some moral or physical defect in these, disabling them from the discharge of their functions. In that event, the duty of instructing a child would devolve upon others ; first, perhaps, upon the immediate relations, and, in their absence, then upon the community. But this would no more authorize a national system of education, than the duty of supporting the adult poor would justify the State in undertaking to furnish food for the whole people. The youth thus orphaned, would be in the peculiar relation of true children of the State, and to them alone its paternal care would be confined.

From the conclusion to which these remarks lead, many are repelled by the apparent hopelessness that we shall ever attain the enviable condition of a generally educated people save by the interference of the State. This is a suggestion of expediency, which, however we may sympathize with it, will not justify us in declining to follow sound principle wherever it carries us. But while the fact that parents and private persons failed to do their duty, would be no just reason for the education of their children being undertaken by the State, may not the fear be unfound-

ed? Private benevolence has already made large, and will undoubtedly yet make larger provision for the education of the people; and I would expect to find, if the results were appreciable, that these private efforts made up by their superior efficiency, for all their inferiority to a State Establishment, in amplitude and symmetry and stability. There are two other considerations:—*First*, The State in assuming the function of educator, arrogates intellectual and moral authority. To this it has no right; and destitute as it is of the wisdom and superintending capacity necessary to execute such an office, it is compelled to attempt it by laying down general laws. These are framed according to the views of a legislature, the organ not of the wise but of the powerful; they take little or no account of the individual and class peculiarities that prevail among mankind; when once fixed, they are with difficulty altered, and therefore soon become unsuitable to the age; so that its interference in this affair is likely to be as perplexing and enfeebling to the healthful spontaneous action of the community, and generally mischievous, as it is theoretically unauthorized. *Secondly*, A system of education must embrace religion. But it seems now generally admitted, that in education by the State, religion must either be left out, or taught in a form, which, however it may satisfy some few persons claiming to be philosophers, is regarded by the rest of the world as defective and mutilated. If, however, the State can give only an education defective, or worse than defective in this capital point, is it conceivable that education can be part of its duty?

These observations have had special reference to National Education generally, but they apply *a fortiori* to a National Religion. Because, while children, the subjects of education generally are under authority, and it might seem easy to transfer their allegiance from the parents to the State, men, who are the subjects of religious instruction, are in religion exempt from human rule. For although they form themselves into religious societies, in which some have a limited command, and others obey; yet both in so doing, and in the formation of their whole belief and worship, they are guided by a Divine communication addressed to every man directly and individually. In religion, God himself is man's immediate Lord; the Church is simply the social congregation of his subjects; its office-bearers have a merely ministerial function; and the State cannot act at all as an office-bearer in the Church, far less assume command or authority within it, without reversing the order of nature.

Finally, an ecclesiastical establishment has been pleaded for as necessary to political order. Religious societies betray, it is said, an irresistible proneness to become more or less political factions; partly from the love of worldly power and aggrandizement which inspires all men, both singly and associated; and partly because the great territorial wealth which in time Churches accumulate, through the liberality of their adherents, gives them a direct interest, and leads them to take an active part in political affairs. Hence it is said that States should anticipate and modify this evil, and by an endowment derived from

itself, and adjusted with a due regard to the whole condition of the community, should gain a political ascendancy over the churches. In this way, while it will make religious societies in no degree more political than they would naturally become, it will prevent them from acting in politics a sectarian or at least anti-national part; preserving them in subordination to the civil authority, and thus averting the danger which experience shows not to be visionary, of their attaining ascendancy in the State, and becoming the supreme political as well as religious power in society.

I will confess that to me this has ever appeared to be the strongest argument for a public endowment of religion. Observing the unextinguishable thirst after political power, and incurable propensity to turn it to the darkest and fiercest uses of religious fanaticism which have characterized religionists, more especially the priesthood and the clergy, in all ages, I have often been inclined to yield a sort of despairing assent to the argument, and admit a public endowment to be a necessary measure of defence by the State against a great and ever-present foe to all its rights. This mortifying conclusion has seemed the more inevitable, when it is perceived that the political aggrandizement of the Church is actually the avowed religious principle as well as the constant aim of the whole class of High Church men, who have comprehended, perhaps always, a majority of the more zealous religionists. In these circumstances, it seems fair to ask what other course remains to the State than to become by artifice the master of the

evil, whose existence within its bounds it cannot avert; to be itself the creator of a political Church; voluntarily to surrender either to all religious societies, or to the one among them which, being most numerous, spirited, and influential, is farthest on the road to empire, a certain share of civil privileges and powers, as a kind of ransom for the share retained in civil hands, as a sop to satisfy and deaden the earthly appetite of the Church, as a means of entangling and retarding it in its political career, of attaching its leaders to the fortunes of their civil patron, and thus of keeping in moderation an evil which in the height to which, if unchecked, it would ascend, would not weaken and subdue merely, but actually suffocate and kill the body politic.

It is evident that this argument (which I believe is the only one that has weight with Statesmen and politicians in general) carries in it a condemnation of Church establishments abstractly considered. It implies that in themselves they are unreasonable, for it rests them neither on the nature or wants of religion itself, nor on the nature and wants of the State, but on the ignorance, enthusiasm, and perverseness of the professors of religion. It implies, therefore, that Church establishments are temporary expedients for bad times and seasons; unless, indeed, it should be alleged that the temper of society to which they are adapted is incurable, being either the natural product of religion, or infallibly generated by it, in combination with the inherent vice of the human heart. I will not believe that it is; more especially, seeing that, even in these our days, the argu-

ment has lost part of its strength. Men have become more knowing and reasonable than formerly, and while religion is as warmly cherished as ever, Churches are more spiritual, more charitable, and less worldly. Ultimately, let us hope, all of them will become altogether such as Christianity requires. Meantime, we see enough to conclude that a public endowment of the Church, although it may be at times a measure of political expediency, is not one of the permanent appropriations of the national territory.

The lame man disuses his crutch as his infirmity leaves him: the child his go-cart as he grows in strength. He who has reached a certain degree of intellectual and moral vigour will reject for himself, with an emotion akin to scorn, the interference of the State, under whatever pretext, with his educational or his religious duties. When men in general arrive at the same moral and intellectual manhood, this sentiment will pervade society; it will become the public opinion; States will be stricken with a useful feebleness and inability to carry on their accustomed intermeddling in this extraneous province, and the institutions created by them for that purpose, now unworkable and cumbersome, will be taken down and removed from the midst of society. Such are the anticipations of reason. But leaving the future to those who shall see it, I would, in conclusion on this subject, say a few words on a present duty of States relative to religious, educational, charitable, and other like institutions, which seems of great importance. It is—to discourage what are termed Foun-

dations in their favour, by which I mean the appropriation by private persons of real property for their perpetual maintenance. Each generation has a good right to uphold institutions of that kind, in such numbers and of such magnitude as it deems necessary; and, consequently, to employ the land in its possession in the erection of churches, schools, and other buildings. To these no limit need be placed, provided an *endowment* is not superadded to them; because so long as the maintenance of the officers of the institution, and their other current expenses are laid on the existing generation, the number upheld will be suited to the wants and desires of each age; which although perhaps not the true, is the best practical test and measure of utility. But the case is altered, and the seed is sown of an enormous mischief, when men, not content with supplying the religious or charitable wants of their own day, resolve to do (as they think) the same service for posterity; and with that view, annex to the institutions they have erected real estates, by the revenues of which they may be perpetually carried on—thus giving them a basis different from the needs or, at least, the feelings of society regarding them. Accordingly, politicians and political philosophers in general, condemn the practice, and the laws of the wisest nations forbid or restrict it. The opposite opinion, which some persons adopt, has of late been warmly maintained in this country, and a censure pronounced on the English laws of Mortmain, as having been grounded at first on a questionable reason, and having now no other support in men's minds than "an historical tradi-

tion."[1] But it may be safely affirmed, that the laws against Foundations have been nowhere unnecessarily strict, and that a discouraging policy is demanded still, and has always been demanded by an urgent public utility. To create a Foundation is not among the rights to which a private man may lay claim. A special warrant from the State was needed to entitle any man to make an entail of lands in behalf of a family: much more, surely, must its consent be had to the creation, by means of a landed endowment, of such an artificial institution as a church or an hospital. And reason dictates that its consent should be given rarely, if ever. Respecting the appropriation of money or moveable property to such uses, the State may be indifferent. Property of this kind is liable to perish in various ways; it does not increase, unless by the accumulation of interest, or by its being employed in hazardous enterprises, while the possession of it confers little, if any, political influence. With the destination of moveable wealth, therefore, the State need hardly concern itself, unless it think fit to impose a limitation on the accumulation of interest, like that of the Thelusson Act of the British Parliament. It is plainly different with respect to land. *First*, Land is fixed within the country, and yields an imperishable revenue. *Secondly*, While money is stationary in value, yielding year after year the same or nearly the same interest, land in an improving country daily rises in value, and in a few

[1] Evidence of Sir Francis Palgrave before the late Committee of the House of Commons on the laws of Mortmain.

years the income derivable from it may be doubled or trebled in amount. *Thirdly*, The economic are the natural and primary uses of land, and ought first to be cared for by the State, which accordingly is bound to allocate it to the persons best qualified for its industrial management. But experience proves that such bodies as churches, hospitals, &c., are, generally speaking, unenterprising and inefficient landholders; and the possession by them of land capable of agricultural uses, is injurious to the economic interests of the public. *Fourthly*, For the most part, the institutions on which the State is asked to bestow a permanent existence, by confirming to them the estates gifted to their use, have no rational claim to such favour and privilege. Generally they originate in the vanity of their projectors, and generally the destination which they make of property is objectionable for one reason or another. Sometimes the object of the foundation is mischievous—as an hospital for foundlings; sometimes superstitious—as for perpetual masses for a man's soul; sometimes the rules prescribed by the founder are impracticable or inexpedient; sometimes his gift is superfluous, from its object being already provided for, and (to mention no more) sometimes it is politically inconvenient, from its accumulating lands in hands which ought not to hold it, such as a large organized body, whether ecclesiastical, like any of the great Churches in this country, or civil, like the East India Company. Finally, even if individually unobjectionable, these appropriations of land, if they were all sanctioned by the State, must, ere long, become a public

nuisance, by their very numbers, for this destination of a man's property has a show of being virtuous and public-spirited, while it gratifies his vanity and love of praise, and hence is one to which minds weak naturally, or weakened by disease or superstition, have been remarkably prone in most times and places. True, since the Reformation, the disposition has been but feebly manifested, partly from the reaction through society against superstition, resulting from that great event, and partly from the discouraging policy pursued by governments in general. Still it has been more active than superficial observers are aware. At all events, there are abundant indications that the disposition is not dead but sleeping, and that it needs only the recurrence of one of those periods of insanity to which, if we may believe Bishop Butler, nations are subject no less than individuals, to make it break out in as great force as in the darkest ages.

While, for the reasons thus briefly stated, we hold that the State ought not to encourage Foundations, and ought not even to grant a general license to its subjects to create them at their pleasure, we confess that there are plausible practical arguments against an absolute prohibition of them, and also great practical difficulties in settling the details of that policy between absolute prohibition and indiscriminate license, which reason and experience dictate to be just and safe. But upon the discussion of this topic we do not enter, being content with having ascertained the general principle on which the State seems bound to proceed in this department of its policy.

There is one national institution which, although not acquiring a specific appropriation, does yet originate so directly from the State being the proprietor of the land, as to call for notice in this place. I refer to the support of the poor. An opinion prevails that the Poor Laws are merely a public benevolence,—"a fulfilment," as one has expressed it, "of the Christian duty of charity," and, therefore, not among the obligations naturally vindicable by States. But the truth is, that to maintain those who, from impotency or any other cause, have no means of supporting life, is an obligation than which none is more clearly entitled to the enforcement of the physical authority. Take one of the many forms of inability, that of children;—it is manifest that should their parents neglect or refuse to maintain them, the State may hold them as violating a duty, and coerce them to repair the wrong; and should they carry their neglect so far as that death overtakes their offspring, as little doubtful is it that it may treat them as criminals. For while the obligation to maintain is clear in morality, as the effect of breaking it is to injure the health, possibly take away the life of one of its subjects, the offence has the character which brings offenders directly and immediately under the coercion of the State. Equally clear, on the equitable ground of reciprocity, is the obligation of children to maintain their parents when poor; and as in this case as much as in the other the neglect to fulfil it results in a material injury, the State is the lawful coercer of the party bound in the duty. Accordingly the civil law recognised among juridical rights

the right to aliment, holding it to subsist between not parents and children merely, but all relations in the ascending and descending degrees, and also between the collateral relations of brother and sister.

But a little reflection will convince us, that this right to be maintained has, as between private parties, a very limited range; the natural relationship which is its foundation soon becomes so remote as to be practically no bond of union, while many circumstances, such as his own comparative poverty, or the burden of prior claimants, may disable a man from fulfilling the duty even when it clearly lies upon him. Beyond the few first removes, therefore, the kindred of an indigent person is no more bound to support him than a neighbour or a stranger. It is to be remembered too, that often men have no kindred whatever. But because in such cases the obligation attaches to no specific person, it does not fall altogether, but seems rather to devolve upon society at large, as the secondary obligant, for it would plainly be chargeable with a deep crime, if it allowed any of its members to perish through want. And among the general body thus concerned, the duty of maintaining such poor persons as have no kindred liable, or whose kindred are unable to fulfil it, attaches, first of all, to the national society of which they are members. It is bound both as the proprietor of the national territory, and as the holder of coercive power. In the former capacity it holds in its hands the main source of food, for the express purpose of extracting its riches from it, and dividing it among its members. Towards this end, it appro-

priates the soil in small shares among its several families. But what more plain than that such appropriation can never justly be so absolute as to be maintainable against those who, from having no share of their own, while they have no claim upon the share of any other person, are in want of food, and ready to perish with hunger. The State that should uphold the appropriation against persons at once needy and incapable of supplying themselves from other resources, would commit a grievous wrong, and if death followed, might even be chargeable with murder. Hence many jurists have laid it down, that a man who, to preserve his life, seizes on food not his own, is guilty of no offence, and cannot justly be punished.[1] But further, as population thickens many persons may be unable to gain a livelihood, besides such as from the impotency of childhood, old age, or sickness, are unable to work. And these combining to get the means of life, which jurists allow that necessity entitles men to take by force, would invade the possessions of other men, and thereby come immediately into collision with the State. For a thousand reasons, the State must prohibit and repress their violence. But to do this justly, it must take away from them the plea of necessity, which, when it can be fairly urged, is in the opinion of the jurists a warrant for such practices. It must therefore provide that no person shall want the means of life. This is the condition which alone entitles it, in administering coercive power, to dis-

[1] Grotius de jur. belli et pacis, ii. 2-6.

regard the apology of starvation for acts of theft, to enact laws against vagrancy, and to put down with the strong hand the hordes of "masterful beggars" by which this and other countries have been infested. In short, the burden of a maintenance for the poor seems to qualify all property, in whatever hands it may be. It is the peculiar business of the State to see that the burden shall be discharged, both by itself as the holder of land, and by the holders of moveable wealth. And a system of Poor Laws by which the latter is taxed, and an impost is exacted from the sub-proprietors of the land, is simply the means of enforcing this indisputable liability.

In connexion with this subject, it seems proper to advert to a state of things not hitherto fully experienced, but which may hereafter exist, namely, a nation's arrival at the limits beyond which subsistence cannot be increased. When in past times temporary causes have thrown isolated districts, or a whole people, into a condition resembling that supposed, the penalty has fallen with deadly severity only upon the poorer classes, the other members of the community being protected by their resources from the extreme want and disease, which were the result and, in some measure, the cure of the evil. This unequal distribution of the common calamity has been borne with patience, because the inequalities in men's fortunes have been supposed, and with reason, to have hitherto originated mainly in the differences of merit, and also because the great wealth of some has been as yet quite consistent with the possession of a comfortable livelihood by all. If society should

ever reach a condition in which, from the difficulty or impossibility of increasing the means of subsistence, the possession of wealth by one man necessarily involved the pauperism of others, measures to prevent its undue accumulation in particular hands, and to effect something like an equal distribution of it, may be imperiously demanded by public opinion, and not condemned by reason and justice. But before resorting to such interferences with the natural distribution of wealth, it would be the duty of the State to see that all other means of averting the evil which called for them had been thoroughly exhausted. More especially, it would be incumbent on the State to exhaust the whole relief from the evils of an overcrowded population, which Emigration and Colonization can effect. This policy, indeed, should hardly be reserved for an extreme crisis, but seems to rank among the ordinary duties of civilized Governments. Revelation, anticipating by many centuries the doctrines of philosophy, announced in its story of man's creation, the relation in which our race stands to the earth which it inhabits. We are commissioned by our Maker to replenish it and subdue it to our use. In the fulfilment of this duty, States are the leaders of mankind; for which purpose each occupies its particular territory. Yet while its primary duty is to cultivate it to the uttermost, its office does not end when that is done or provided for, but rather seems to include the farther task of looking abroad for new regions on which to plant those numbers of its civilized and industrious subjects for whom its native seat has become too narrow. Consulting their in-

terests and its own duty, it seems bound to provide for them some foreign home. This, indeed, it is not lawful to effect by doing injury to any other individuals or other people. But hitherto colonization, if it had been limited to the occasions which call for and justify it, would have involved the injury of none, but would have benefited all. True, it would always have required what may seem at first sight an invasion of the rights of the aborigines, or savage preoccupants of the uncultivated regions to which it should be confined. But, on reflection, while we grant that the wild inhabitants of such countries have many rights, and should be anxiously protected from oppression, and while it is difficult to fix precisely the condition in which the population must be in order to invest it with the right of exclusive possession of the territory on which it lives, it is clear, in reason, that this right cannot be claimed for any mere tribes of roving savages, subsisting on the animals they kill by hunting, and the roots they dig up with their fingers. It seems fair and expedient that the territory traversed by such occupants should be appropriated to the surplus population of a civilized nation. The welfare of that population concurs with the general interest of mankind, to demand their settlement in a new seat. And inasmuch as to be secure in power as well as fortified by a rightful title, possession must be taken in the name of a nation, it is within the province, and sometimes is the duty of Government, to head its subjects in such enterprises of Colonization.

CHAPTER VI.

THE GOVERNMENT OF THE STATE.

The foundation of supreme authority in the State.—Such authority naturally belongs to the possessors of political power.—Supreme political power founded on physical power.—Theoretical inference that supreme political authority should be shared equally by all possessors of coercive physical power.—Variance in practice of States from this rule.—Cause of this variance.—Maxim that property gives political power, examined.—True effect of property.—General law announced that the balance of political power follows the balance of physical power in political action.—Proofs and illustrations.—The political distinguished from the military action of physical power.—Application of foregoing doctrine to explain Constitutions.—Purpose of a Constitution: to collect and enforce the will of the holders of political power.—Inefficiency of Constitutions which distribute authority differently from the actual distribution of power.—Constitutions good or bad, not abstractly, but as they are or are not accurate organs of the political power in the nation.—Notice of different Constitutional forms.—Explanation of various political phenomena.—Tendency of Society towards Democratic government.

THE foregoing inquiries have shown us the general nature and function of the body politic. It is a true moral society, and has a duty to discharge, which can be generally described if not precisely defined. We have seen that it has a special connexion with the physical strength of man, and with the land in which he dwells. We have determined the import

of that connexion; and have traced the outline of those principles of action which States are bound to follow as the lords of coercive power and the proprietors of territory. Having thus learned whence they spring, and by what principles they ought to be directed, let us proceed to inquire into the means by which their movements are guided; in other words, into the government of the political society.

Of course, being a moral society, the State obeys a will. And this will must, in theory, be held to be that of all the individuals composing it. But, in practice, every one knows that rarely indeed are all the members of States consulted respecting their procedure, while those admitted to the council are often at variance; and the question is, to whose will, as between the members themselves, the predominance attaches; and to whom belongs the title to speak for all. In other words, upon what principle are power and dominion in bodies politic apportioned among mankind?

The inquiry thus raised, concerning the law of political dominion, has respect, of course, only to sovereign power—that dominion which is supreme and ultimate, and has no immediate reference to the varied forms of derived and subordinate authority—legislative, judicial or executive—by which the will of the supreme is carried into effect. In pursuing it, I would distinguish between what ought to be—meaning thereby what will take place when society is matured—and what is in ordinary circumstances. It will appear, I think, that in both conditions the supreme power is distributed upon one and the same

principle ; but that the persons holding it in the one and the other are necessarily different.

The inquiry into what ought to be, need not long detain us. I am not aware of a reason why a law should obtain in political society different from that which operates in all other human conventions. In these, power or authority, or whatever else is the name for the faculty of commanding their movements, falls to each member in proportion to his share of that which forms, so to speak, the stock of the society. Thus, in a union of which industrial skill is the instrument, he who is most skilful has naturally the pre-eminence ; in one operating by wealth or capital, he who is wealthiest ; in the societies of the religious, he who is most devout ; in those of the learned, the most erudite member commands the largest proportional share of regard and dominion. This is not reasonable merely, but necessary and inevitable. If the association is a voluntary one, none will join it, if rank and importance in its councils are to go by any other rule than that which passes there for merit, namely, the share each man contributes of the common stock of the union ;— if, for example, in a society of skilled artizans, the command were given to the man of the strongest arm ; or if, in an assembly of poets, stature were the measure of reputation. Even when the association is not spontaneous but imposed on men by their wants or situation, considerations of necessity or utility will bring about in the long run, a distribution of authority among the members by the rule of their associate merit. And he will certainly be raised to the

highest eminence who shews himself to have the largest share of that thing, be it personal qualities or external possessions, upon which the society depends for the accomplishment of its purposes.

Unless, therefore, the political society obeys some extraordinary law of its own, we may conclude respecting it very nearly as follows :—Having seen that the territory belongs by primary and inalienable right to the society as such, we may hold that no individual member is entitled to power as being the contributor or the independent master of any portion of this common subject. No man can say truly that he brought any part into the society, or that he can withdraw any part when he pleases. Whatever portion any man has, that he has received from its paramount proprietor, the State ; and upon our hypothesis, the grant whereby he holds it, carries to him no share of political power, but only the natural and industrial properties of the lot.

It is thus to be concluded, that no individual member of the body politic is entitled to any distinguishing power or authority within it, in respect of his territorial possessions. The political influence of territory appertains by right to the society as such, and operates in its favour, in producing within its bounds the fealty and attachment of all the residents ; and beyond them, in giving it rank and consideration in the community of nations. As between one nation and another, territory is a legitimate element of weight and dignity. In the commonwealth of kingdoms, the largest territory would, if other things are equal, give the largest authority. The reason is, that

then it would represent the largest numbers and force of men, and be an infallible sign that the nation holding it, being the most powerful, was pre-eminent in that which constitutes the substance of States. But at present, territory is not, and perhaps never will be, the measure of rank even among nations, because from the unequal fertility of their different possessions, and the unequal civilisation of their inhabitants, it is no certain index of their available force.

Our conclusions must be somewhat different with regard to the other element of the political body, namely, physical power. This is the inseparable personal property of each individual man; and a thing which can be put under the command of others, only by an act of the will of its owner. A like simple act of his will can also withdraw it from their control; and this its owner will naturally be disposed to do, whenever he is dissatisfied with the use which they propose to make of it. But the consequence of such withdrawal of a man's power from an association which works by power, necessarily is to weaken it; and if many men did the same, it might be altogether incapacitated for its purposes. More especially would this happen if the dissentient force did not simply withdraw, but (as it probably would do) became alien and resistent. Hence the society has a permanent interest to conciliate and attach to it all the individuals of whose force its own power is made up, and indeed to consult with them respecting, and gain their assent to, all its movements. And although it may not be possible to obtain their unanimous con-

currence in each one of its acts, yet it plainly must have always that of the major proportion of the power of the body. But the major part of the power is equivalent to the numerical majority of the persons composing it; for it is certain that physical strength is dispersed among men in portions so nearly equal, that in a calculation embracing multitudes, any one man may be safely reckoned as of the same value with every other. In such a calculation it is evidently quite safe to say, that of any two casual divisions of men, the greater physical strength will be in that which consists of the greatest number of persons. These considerations seem to shut us up to the following conclusions, *first*, That in political society the possession of coercive physical power is the foundation of dominion and authority; *secondly*, That all who are thus endowed have a title to an equal share of such authority; and, *lastly*, That the actual command of the society must always be in the hands of the numerical majority of the possessors of that species of power.

It would not, I think, be difficult to prove, that the state of things to which these conclusions point, is morally right and just, and also expedient—the greatest security for the good government of the political body being then obtained, when the whole of its members, qualified as before mentioned, are allowed equal authority in its affairs, and all its acts are prefaced by the assent of a majority of their number. But this argument is needless. For even were it otherwise than right and expedient, this principle of equality as between individuals, and of the

predominance of the majority as regards the whole society, is the only practicable rule in a body whose instrument is force; for thereby only is it possible to support its resolutions by this their natural and indispensable sanction. Most vain would any law be, giving the authority to men of wisdom, or virtue, or learning. Their superiority would be merely nominal, unless they were able to move the force of the community; and whenever the power to do this was attached to other persons, the commands of the former would be utterly nugatory, unless, coinciding with the good-will, they should receive the countersign and warrant of the latter. In this way the law of political dominion would appear not to be so much one of reason and expediency as a species of material necessity. And such indeed it is; for although different States may exhibit different allocations of authority, many of them at variance with that which we have set down as the form proper to the body politic, yet, upon examination, it will turn out that the same principle is operating in them all; that the differences in its manifestations are caused by peculiarities in the condition of the societies in which it is acting; and that in truth, authority in the political world moves hither and thither by a tendency as uniform, regular, and irresistible, as that which disposes the masses of the material universe.

To shew this to be true, and to explain in conformity with it the prominent appearances in the sphere of political action, is the object of this chapter.

The conclusions just announced as to the proper law of supreme political dominion, being that of equality and universality as regards the holders of physical power, were in so far theoretical as they had reference to the body politic when matured and perfect. They supposed that the whole members of the society were intelligently and actively co-operating for the purposes of its institution. And in such a condition I am prepared to maintain their strict and literal truth. But such has not hitherto been the ordinary condition of nations, nor indeed since the beginning of the world has any nation come within sight of it. In one or two nations a bare majority, while in most nations only a small number of their members have been conscious of, and taken up the political function. And hence, although the law of dominion has been, so to speak, constantly in force, it has found in each country only a few subjects to operate upon; and while it has carried these to pre-eminence and command, it has necessarily left the multitude in a state of political prostration. I say *necessarily*, for that multitude by their moral inertness have been, in reality, never within the body politic as members; they have been its passive subjects or its slaves, and consequently, have never been under the action of its natural influences; for these to take effect must have intelligent materials to work on.

In explanation of the foregoing remarks, let it be observed, that physical power requires an act of the intelligence and will of the possessor in order to move at all; and especially to take a steady motion in one

direction. Before a man will put forth his bodily power for any purpose, he must perceive that such is his interest or duty; and his ideas of interest or duty must be confirmed into a principle of his life, before he will do so continuously, and make himself a permanently operating power in the course they point out. Now we have seen that one of the uses of such power is social coercion, and that the security for a right and beneficial coercive discipline lies in all the inhabitants of the same territory combining to act as a joint power and according to an agreed on law. But to this idea, even in its rudest outline, far more in its perfect development, the minds of men in general take a very long time to rise, and still longer to embrace it intelligently as a rule of life. It is necessary, first, that a man be elevated considerably; to a point from which his mind has an extensive view of human affairs, and where, above the reach of depressing cares and the lower passions, he is able to conform his conduct to the general laws of duty and prudence; of which the fruits, though rich and certain, are often late. But for a long time, even in an improving society, the great body of men pass their days with their faces prone to the ground; they are poor, engrossed with care for their daily sustenance, spiritless, and with minds whose point of vision is scarcely more elevated or comprehensive than that of the cattle around them. As to the body politic in particular, they have a dim sense that they are dwelling within a great society, and a conviction, the offspring of tradition and custom, that they are bound to obey its

commands. But of any conception of its nature, objects, or their own moral relation to it, they are utterly devoid; and of its rules and working, as causes of the good or evil of their lot, they never think and take not the least account. For the most part, indeed, they lose sight of it altogether, recalling its image only when pressed by some imminent danger, or when they see its power exerted in their neighbourhood, in the destruction of some offender. At times, perhaps, when some dreadful and widespread calamity, or some violent insult to the popular prejudices, proceeds from, or is ascribed to the public authorities, a man's nature changes, and he and his neighbours, stung into the attitude of public men, suddenly precipitate their whole force against the objects of their wrath. But the transient fire soon burns out, and he relapses into his old dulness and torpidity. At other times, he goes forth on some public service, but it is at the call of his superiors; he moves as a machine without understanding and without spirit, except, perhaps, when brought face to face with the traditionary enemies of his race. In short, it is not till he has come to perceive by a steady light the nature and objects of the political engine, how powerfully it bears upon his personal interests, and how deeply he is concerned in, and responsible for, the right direction of the public force, that a man becomes a POLITICAL CREATURE.[1] Up to that time he may have been physically within the political society, and as such, a subject of its autho-

[1] A phrase of Harrington, which I employ for want of a better.

rity: but he becomes something nobler the instant he awakes to political intelligence and enterprise. He becomes a political power. His person and force come instantly into the field of political action, prepared to take the direction prescribed by his reason and will. His presence is as instantly felt and acknowledged by those there before him. He is hailed as an ally, or opposed as an intruder. But whether welcomed or repulsed, he has for ever ceased to be the nothing that he was before. For those who refuse to admit him as a friend still see in him something to dread and watch—a speck in the sky which may grow into a cloud and a storm. Henceforward, therefore, he either retards or furthers the movements of the political body. He has become in, and of it, in the most intimate sense; and as a stone dropped into the ocean is said to stir its whole bulk, so his small power modifies, though ever so insensibly, the general force in action to which it is added.

These observations suggest an important practical qualification of the general doctrine, that the possession of physical power gives political dominion. The holder of the power must have a political will, otherwise his power is dormant, and, as it were, non-existent. Not being in action it cannot affect the movements of the body politic in one way or another. However numerous, or however potential, therefore, those thus inert may be, they keep the condition of slaves or subjects, that of masters in the society being occupied by those whom intelligence, or any other cause, has called into political activity.

Let us advert for confirmation of these views to

some general historical facts. Every one knows that the distribution of power in political society is almost always practically coincident with the distribution of property. This is most distinctly seen in the case of landed property. Hence the renowned ancient legislators and philosophers held it necessary to lay the foundation of the constitutions they constructed or imagined in an arrangement of the territory. Thus did Moses, thus did Lycurgus, thus also did the founders of the democratical colonies from Greece, and thus also Servius Tullius, that he might erect the Plebeians into a distinct constitutional order, (to which Rome was indebted for her greatness,) made a new division and assignment of lands to the several tribes. Thus also we see in most pure despotisms all the land belonging to the Sovereign; and that by no legal fiction, but really—no subject being allowed a permanent and independent existence as proprietor, or indeed to be other than one of a vast humble crowd of tenants and serfs. Thus, also, where the land is possessed by a few great Lords, the constitution takes the form of an Aristocracy, or perhaps Oligarchy, having, it may be, one of their number as chief, with the name of a king, and such superior influence as belongs to leadership. And thus also, if any cause should there break up a little the landed monopoly, and scatter some portion among the ranks below, power descends with it, and the constitutional forms relax and liberalize. As once took place in this country, when that politic monarch, Henry VII. of England, having, by various measures, facilitated the alienation of land, so that much of it passed

downwards from the great nobles into the hands of the gentry and yeomen; and the dissolution of the Abbeys, and general plunder of the Church which signalized the next reign, having sent much more in the same direction, there resulted a vast augmentation of the political power of the middle order; and as a consequence, so rapid an enlargement of their privileges, and so great an elevation of their constitutional organ, the House of Commons, as to make it in the reign that followed, the ruling force in the Legislature. And thus, finally, those who would establish a democracy, such as has been planted in France, and has taken root in America, do not leave even so comparatively feeble an obstacle to the breaking up of estates as the law of primogeniture.

But it is needless to enlarge in proof of a fact so well established as that the political balance of power is affected by the distribution of property. In the opinion of some, indeed, property (including moveable as well as landed) is to political power what the cause is to the effect; and it has been announced as a maxim in political science, by a singularly learned and sagacious author, whose works, I think, merit a warmer praise than the frigid eulogy bestowed on them by Mr. Hallam,[1] *that the balance of power follows the balance of property.* Of this maxim of the upright and patriotic Harrington, it has been observed by a writer, more acute, more profound, and more calm, and having also the assistance of later lights and more varied experience—I mean David

[1] Hallam's Hist. of Literature, vol. 4.

Hume, that it must be received with several limitations. The most important of which is, *that less property in few hands, gives more power than greater in more.* But his remarks imply his assent to the general doctrine, that property is the cause of power; and have indeed for their object to explain in conformity with it, some facts that appear to contradict it.[1]

Notwithstanding such high sanction, I venture to think that the maxim is unfounded. It seems to be refuted more especially by modern experience, which shows much political power in daily operation having no such basis as property; and many risings and fallings of the political balance, for which the wealth in the respective scales can by no means account.

The truth seems to be, that property gives political power only when, and only in so far as, it gives the command of the physical power in political action. In explanation, let us attend to what—judging by the real history of those races by which the political element of society has been most purely and fully developed—we may conclude is the natural origin of a State. It may arise from the families or tribes who occupy separate portions of neighbouring territory being driven to form a league, and to consolidate their possessions into one domain. Or it may arise, as many have done, from a united company leaving their native seats, seizing upon the territory of a weaker people, and dividing it among

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[1] Hume's Essays, vii. *Whether the British Government inclines more to absolute Monarchy or to a Republic.*

themselves, generally, or perhaps exclusively, among the chiefs and princes. In either case, the actual daily control of the land goes into the hands of a certain number of the whole members of the society; those, namely, who, whether from pre-existing habits of clanship, or from other causes, occupy the post of chieftains. Many are left landless, but are attached to the landed class, as hereditary retainers, or become their subholders or vassals, or are serfs, or are dependant on them as artizans. Probably those who hold or obtain estates had the political spirit awake in them before. But if it were asleep, the acquisition they had now made would thoroughly arouse it in them and all their class. Because the land is, as we have seen, in the most intimate relation to the State. In strictness it belongs to the State. But although this doctrine is perhaps not then recognised, the practical connexion of the land with the State is then felt as strongly as at any after period. The very first laws which a care for its own existence requires the State to enact, must refer to the land; its tenure and mode of transmission and descent must be fixed; and as it is then the only wealth, and the sole attraction of foreign foes, they must settle also what defensive services are to be rendered by its possessors. Hence the landed classes of all States must be from the first alive to all political movements. They, first in society, would awaken to political intelligence; among them, first would arise the political will. They would earliest and most eagerly flock to the public councils. In short, they would be brought upon the political field by the same act which gave

the State its being. And once there, they would never leave it; their possessions, like an electrical conductor, transmitting to them from the centre and all points of the circle, a perpetual flow of political excitement.

Not only, however, does territorial property make its possessors politicians—movers of the political machine—while yet the rest of society are indifferent or asleep; not only does it retain them steadily and perpetually in political action, but farther, it enables them to wield, for political ends, the physical power of other men, as if it were their own. In the condition of society on which our minds are now fixed in speculation, land is either originally apportioned or comes by circumstances to be massed and held in large estates. Consequently, landed proprietors have a considerable clan or following, who in return for their holdings under them, become bound to do the service which the condition of society may lead them to desire. This state of things originating in early barbarism, and agreeing so well with the subordination to hereditary chiefs, to which men are then prone, from feelings of community of blood and reverence for pure and distinguished ancestry, often carries itself forward far into civilisation, and the rational mind is startled to perceive some men inheriting, as their property, a sway of a very extensive kind over a number of their fellows. One of the earliest and most ordinary uses to which land-holders put their dependants, is that of agents in the political contests in which they themselves are engaged. This they do by bringing them out as partizans of

their side. It matters not although their dependants should have personally no political knowledge, no political will. They need the protection and favour, and therefore they obey the will of their leaders, who give to their force a political direction. Having thus the command of a great mass of physical power, which he can turn to whichever side of the political balance he pleases, the landlord obtains a proportionally large share of authority in the councils of the State. In those rude ages when political questions are decided by a muster of armed men, and perhaps a trial of strength in actual fight, these dependants form the soldiery of the landlords. In later times, when more peaceful means are adopted for ascertaining the will of the political force, they are still reckoned to their territorial lords, and give rise to constitutional forms, securing to them an influence in the national councils proportioned to the part they command of the physical power of the nation.

The political operation of landed property thus appears to be two-fold. Its possessors are necessarily the first to concern themselves in political affairs; and they are enabled to back their will regarding these with the force of others. Their individual power gets an early political direction, and it carries in its train the power of their dependants. Hence wherever a people has been fairly planted and begun to take root as a nation, the land-holders amongst them must assume the rule, and (unless indeed where religion or superstition has subjected the people to a priesthood) must exercise it alone, so long as the na-

tional society is composed of them and their followers. During that period, therefore, it will appear to be true that it is property which gives power; and in the national councils the balance of power will follow the balance of property. But the reason is, not that property is the cause of power, but because it alone then steadily acts as an excitement to political action of physical strength. At that time the amount of property is an exact representative of the whole force in steady political action. And even when other influences begin to produce political life, the strength put in motion by property is so overwhelmingly preponderant, that the maxim which makes it the sole source of political dominion seems still to be sound. Nevertheless the truth is, that it attributes to a mere instrument the rank of a cause. And if a general rule is to be laid down, I venture to propose as a more correct statement of the law of political dominion, in its simplest and ultimate form, that the balance of political power follows the balance of physical power in political action.

I say *political action*, for a clear distinction is to be made, and ever borne in mind, between the political and the warlike or military action of force. In the latter, two or more bodies of force are avowedly discordant, and each is attempting to establish a superiority by the destruction of its opponents. In the former, the whole force is professedly harmonious, formed in fact into one body, and is in operation for the purpose of peace and universal conservation. In this, accordingly, all discord is unnatural, and when it leads to blows, it is the last of calamities. For

where the warlike action of force begins, the political action ends, and the State is broken up. By those, therefore, who would live as one State, war among themselves must be avoided. Here is the cause why physical force in political action must have political power. It lies in the possibility of such force passing from a political into a military operation, in the necessity for averting that catastrophe, and, consequently, of making an inquiry into the opinions of the possessors of force, a constant preliminary to every movement of the State. Here also is the cause why the supreme political power must follow the greatest physical power in political action. For when a dispute arises in a society whose instrument is force, if it is to be composed according to political rule—that is, without an actual trial of battle, a breaking up of union, and a return to discord and war—it is plain that the members whose force is weakest must give way. But the weakest power, according to a peaceful calculation, is necessarily coincident with the smallest number of individuals in action. From which we conclude, that, in the body politic, the supreme dominion must always, at the long run, devolve to the numerical majority of political agents.

For some farther proof and illustration of these views, I have to request attention to the following observations :—

The general truth that physical strength politically directed is the basis of political power, is indicated by a variety of facts ; of some of which it may be useful to take notice. Thus, for instance, we may

explain by it the observation made by Hume, that less property in few hands gives more political power than greater property in more. Strictly speaking, the fact is not so, though appearances often are. It seems evident that, supposing the numbers attached to the larger property were in proportion to its extent, its owners must necessarily be more powerful than the owners of the smaller, provided they united and acted with one will. But they are unconnected with each other; some are ardent, others calm; some tend in one way, others in another: and hence the physical power which their properties represent is in its political action broken and dispersed, and in a manner lost to the view. Nay, some of it may be lost in reality; because in some proprietors the political spirit may be altogether dead, and they, with their dependants, politically inoperative. But the larger proprietors never can afford to be politically neutral, and as the whole power which each of their properties commands, comes forward as a collected mass, and acts steadily all in one direction, it necessarily bulks more in the eye than that attached to more property in more hands; and may at times (by reason of the political inertness of the latter) actually comprehend more of the men in political action, and therefore give a greater amount of political power to its commander.

The same general cause accounts for the striking difference in political power between proprietors of territorial, and the proprietors of moveable or incorporeal wealth. The latter may be as rich as the former; and possibly their wealth may be the means

of maintaining as large, or even a larger number of persons. But they never have equal power.[1] The reason is chiefly that the personal connexion between them and their dependents is neither so permanent, nor, while it subsists, so intimate and absolute, being limited simply to the performance of some specified menial offices or some industrial services. Add to this, that moveable wealth not being fixed within the jurisdiction of the State, its owners are not under the same strong constant motive which animates the holder of land to acquire the means of controlling the body whose slightest motion affects him, and from whose action he cannot escape.

Where, agreeably to this principle, should we expect to find a despotic government? Only where the whole physical power in political action is attached to the will of one man. So, accordingly, it is in fact; despotism, being found in countries where the population is slavish from a principle of religion, or is disunited and apathetic from poverty and ignorance, or is so disjointed by its local positions and its moral distinctions, as to be prevented from coming to any common political understanding, or mustering in any available force. In such countries, the Sovereign is sole master of the political field, and ranges over it at his pleasure. But if on any matter his subjects have a will of their own, or if any thing should rouse them from their apathy in the sphere where he was wont to be absolute, he becomes sensible of a check;

[1] Except indeed in some small commercial or maritime Republics, where, however, the opposite state of things which exists, is a confirmation of the rule.

of the presence of a counter power which makes him no longer supreme. Thus, we find, that in Mahommedan despotisms, the sovereign defers to the religious usages of his subjects, conscious that to transgress them would rouse a force that might sweep him from his throne. Thus, also, we find that even when tyranny confines itself within its customary limits, if it should here go to excess, the most slavish people will awake to political life, and take up the task of redress and retribution. And hence it may be observed in passing, that although we may hold with Montesquieu, the principle of despotism to be "fear," yet we must dissent from the more vehement language of Mr. Mill, who calls it "intense terror;"[1] for fear, when intense, acts against its inspirer. It is a Jewish proverb, that *when the tale of bricks is doubled, Moses comes.* And a despot, when he has filled his subjects with intense terror, must feel himself under restraint, and be constantly expecting the appearance of the avenger.

This same principle of political power being attached to the physical power in political action, which thus explains the nature and the limits of despotism, accounts for the not unusual phenomenon of the same people possessing but feeble power in domestic politics, and being, in regard to them, little considered by their rulers, but exercising a great influence over external relations, especially all involving the reputation and honour of their country. The reason is, that they are apathetic with respect to the one, but interested

[1] Essay on Government.

in the other. As regards foreigners, they have a strong national feeling; his separation from foreigners is man's first, and for long his most animating political idea. In this department, the lowest of the people have a political will; their force comes into political action, and their rulers often find themselves here under a popular control, as resistless as it is unusual. One remarkable example is France, whose populace display a vehemence of ardour regarding external relations which strongly contrasts with the comparative feebleness of their interest, and consequently of their power in their domestic affairs.[1] A similar irregularity in the political will of men, accounts for the variable power which one and the same party is found to put forth in the internal contests of a country; and, also, explains how a small number of citizens united and eager for an object regarding which the rest of the community feels languidly or not at all, often succeed in shaping to their wishes the course of the State.

In a word, the quality of physical strength has, at times, been openly acknowledged by mankind to be

[1] This was written before the late Revolution, and is left unaltered and unmodified, because while that event abundantly proves that French society is too thoroughly democratized for a constitutional monarchy to be possible there, it has as yet manifested no increase in the French character of that prime quality of a free people—jealousy of arbitrary power in government. No community of freemen would have suffered a Provisional Government, created merely to preserve order during a temporary interregnum, to introduce, by its edicts, fundamental changes not instantly necessary, far less so many and so important as those which distinguished the sovereignty of M. de Lamartine and his colleagues.

the title to political power. When the ancient Germans went to the public councils, they plainly signified the character in which they claimed to rule, by carrying with them their arms. In many states boasting a more regular construction, authority in the National Government has been connected with service in the national force, and in some has even been proportioned to each man's rank as a soldier. Such appears to have been the principle of the older Roman constitution; and such, it is remarked by Aristotle, was the general rule of assigning authority in the more ancient commonwealths of Greece.[1]

Let it not be thought that such adjustment of the political authority to the physical power of the citizens is confined to military ages. It obtains more surely in the most peaceable times, the observance of the rule becoming more rigid in proportion as a State comes nearer to its end. What is its end? To confine physical force to its just coercive uses? How is this to be accomplished? Only by putting the force of all within a certain district, under a common will. And when is the necessity for this unity in the action of force so strongly felt, as in times when wealth has accumulated, intelligence been diffused, and peace and security become, so to speak, among the necessaries of life? But how otherwise

[1] Politics, iv. c. 13. He goes on to attribute the greater diffusion of political power which subsequently took place in those Republics, to the growth of population and the employment of infantry, which increased the number of men bearing arms. Αυξανομενων δε των πολεων και των εν τοις ὁπλοις ισχυσαντων μαλλον πλειους μετειχον της πολιτειας.

can this union be secured in a peaceable unmilitary age than by a league upon the principle of first consulting all the holders of force, and then taking the will of the majority as the law of the body. Let us suppose that in the council of such a league only a certain number should be admitted. If those excluded possess the requisite intelligence, they will, notwithstanding their exclusion, form their own judgment of State affairs, and if it should differ from that of their privileged brethren, they will do what they can to cross and thwart them. And such disagreement is nearly certain, both because the number admitted are likely to consult their own interests, to the neglect of the interests of others, and because the number excluded are predisposed from resentment, to quarrel with the privileged. Now, as the privileged class is formed into a combination by law, the excluded class will, from sympathy, combine voluntarily. To these will be joined all the disaffected among the privileged party; and thus there will arise within the same territory two combinations of force, each approving of separate measures, and each doing what it dares, to make its own the rule for the whole inhabitants. It is possible that the legal body may maintain the supremacy; but this will only be achieved by a constant effort, weakening, distracting and precarious, and by the sacrifice of one-half of the social peace and security which might be enjoyed. To this state of things nothing can put an end but the fair admission of all the holders of force to the common council, or a proclamation of open war against the excluded power, and its destruction

and enslavement. But what is the latter alternative but a dissolution of the body politic—an avowed return to the condition of which not the union but the conflict of force is the characteristic. Rather than encounter the hazards and horrors of this course, men will adopt the other. Like the Roman Patricians, when the discontented Commons withdrew to the Sacred Hill, threatening to set up a new State, they will bribe the disaffected into re-union, by a concession of their rights. And a sense of expediency will induce them to clothe with political privileges the masses of physical power, which, as civilisation advances, successively become embued with political life and will, long before they discover that this is agreeable to the nature, and dictated by the principle of the body politic.

In illustration of these remarks let us, as we have imagined the outset, follow the progress and improvement of a State. To the man who is truly enlightened and high spirited, the concerns of the body politic never can be indifferent. Such a man will busy himself in political affairs from a principle of self-respect and duty; impelled at once by his nobleness as a freeman and by views of prudence and benevolence; for how can he be more usefully employed than in guiding aright a power so potent as the State is for good or evil? But this sense of personal nobility, and this principle of elevated morality, belong to a very advanced age; and if the political spirit followed only the growth of so refined a sentiment, it would possess even now only the rarer minds. Very long before these high ideas per-

vade society, and affect it as a principle of action, lower and equally forcible causes make men political agents. They are made such by their plain worldly or pecuniary interest. This it is that, in the first place, calls the landlords, the possessors of the sole wealth of early times, into the political field. And when in the course of time other classes arise, the same motive operates upon them with the same effect. While the landed class is the sole holder of political power, the plan on which the State proceeds will have respect only to its selfish interests, and will therefore be neglectful of, or hurtful to, those of all the other classes. Yet if it leaves ever so small room for society to advance, there will ere long spring up the creators of moveable wealth—the class of artizans and mechanics—above whom will gradually grow the men of trade and commerce ; and ultimately the followers of the more intellectual and refined avocations, from whom society receives much of her stability and all her embellishment. From the first, these new orders of men, unconnected with land, and engaged in common pursuits, will herd together, each of their bands in its own locality, devising measures to defend the men of their occupation, and to protect and develop the new species of wealth in the creation of which they are engaged. But it cannot be long until they come into collision with hostile laws and customs, under a constitution where a pure dynasty of landholders forms the legislature. Such obstacles will multiply upon them as they advance ; while, in due time, they will reach a stage where they will desire, not simply the removal of restraints

arising from adverse legislation, but the mastery of the Government, in order to gain some object favourable to their interest, and to which the national force alone seems equal—as the formation of a treaty, the prohibition of foreign rivalry, or the plantation of a colony. Meantime, their growing wealth will have raised the cupidity of the ruling class, and as a return for the concessions successively made to them, and the protection they receive from the Government, they will be required to contribute, by a tax or otherwise, towards the public service. Here is a progress, at one stage or another of which, this new class must become political. Feeling the action of the Government, they will inevitably attempt to control it; and the moment that design is conceived, they become a political power. At first, indeed, it may be feeble; because the numbers of the whole class may then be comparatively small, and of these only the higher spirited will be equal to the bold design. But as their wealth and numbers increase, and along with these the pressure of Government upon them, the political spirit will diffuse itself, till, at last, a large band, habitually attentive to political affairs, will keep up upon Government a combined, earnest, and sustained action. And as they now need command over Government, so will the Government have daily more need of them, of their numbers, of their spirit, and of their riches. In the end it cannot but happen that the new band of possessors of the physical power thus steadily employed in the political contest, shall receive from the old a formal admission to the ranks of the constitutional authorities.

In these remarks I have been merely attempting to express the rationale of real events, and especially to describe the growth of political life where it has been most visible, steady, and healthful. Every one knows that in Europe the burghs and towns,—the seats of manufacturing industry—aspiring at first only to a bare existence, placed themselves under the dominion of the nearest feudal lord who could protect them from pillage and destruction ; next asserted a local independence, when by their wealth and numbers they had become capable of self-defence and of internal self-government ; and lastly, as their numbers, riches, and intelligence still grew, entered into a relation with the general Government, and were established among the legal authorities of the constitution. This last concession was not, we may be assured, a mere act of grace, but of that prudence and interest which constitute political necessity. It was not a free grant of political power to the burghers, but a legal recognition of power which in great measure they possessed already. It was, in truth, merely an act of obedience to one of the clearest rules of political art, which directs that, in the construction of a constitution, the distribution of legal authority should always correspond to the actual distribution of power among the members of the political society.[1]

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[1] It is said that the Sovereigns helped forward the burghers to their municipal and constitutional privileges, but as their reason was to have them as a counterpoise to the Nobles, it is plain that the Sovereigns must have perceived that they had the power to be such.

Let us suppose, again, that the same course of progress which has brought these new classes into the number of political authorities, goes on, as it naturally should, under the freer constitution thus established, that the heads of the industrial order swell into large capitalists, and that, as a consequence of increasing peacefulness, luxury, and knowledge, landlords come to look for gain from the cultivation of their lands. There will speedily grow up under the latter an order of farmers and agriculturists; and around the former, others of their own class, while under them will be generated a crowd of inferior traders and workmen. It is certain that these last will find themselves in a like condition to that of the early burghers. Living under laws proceeding from the will of landholders, slightly modified by that of the burgher chiefs, they will have many occasions to murmur and complain. In one quarter they will be galled by positive oppression; in another, they will be cramped and fettered; in a third, they will be without needful assistance. In short, they will discover that, in the adjustment of the laws, little regard has been had to their particular interests, and that the same inconsideration still marks the policy of the State. Meantime, it is probable that some new tax—that most potent of all nurses of a political spirit—shall be laid upon them; for the growth of the fleece invariably brings the shearers down upon the flock. The result is, that they are converted from mere slaves, who believed, as they were taught, that they had nothing to do with laws but to obey them, into scrutinizers of and reasoners about them,

their favourers or their opposers. In other words, they are made political agents.

Concurrently with such events, it cannot but happen that the intellect of the commonalty generally shall have arisen above mere views of individual interest, to an apprehension of general notions of social right, and duty, and prudence. For, it is natural, or rather necessary, that a people growing by industry and enterprise in wealth and comfort, should grow also in knowledge. For knowledge, while it will not take root in a soil chilled by poverty, and withers and dies in the atmosphere of overdone, corrupted, and decaying civilisation, spontaneously springs up and flourishes where industry is afoot, and equal justice is by to give it play, and where, accordingly, their combined influence is scattering

> with a free though frugal hand,
> Light golden showers of plenty o'er the land.[1]

It is indeed only among a "rising race" that there is the boldness to pursue, the generosity to love, and the leisure to acquire it. The inquiring and knowing turn, thus natural to an advancing people, being attracted towards political affairs by their bearing upon their physical wellbeing, will in the end bring them within sight of the great principles of political law, and of their own right and dignity as men. Beginning in selfish interest, the political bias is ere long approved by their reason and conscience, and their action upon the Government, which at first

[1] Gray.

was feeble and irregular, rises to a strong steady movement of principle and habit.

In this way another great number of the possessors of physical strength being engaged in furthering or retarding the motions of the body politic, they become a new political power. Meantime, however, this upstart mass of political force is regarded by those to whom law has confined authority, with suspicion and hatred. It is first condemned, then insulted, then feared. It is branded with every ugly epithet; it is disloyal, factious, seditious, rebellious, atheistic; it is put under all the curbs, and met with all the resistance, that can safely be tried. But in vain. Nothing will prevent, scarcely will anything retard its ascent to a place in the constitution, except such assaults upon property and intelligence as shall extinguish the one and destroy the other, and thereby drive back the people into the prostrate and barbaric condition out of which they had thus far emerged. But to effect this it would be necessary to dissolve the political union, and set on foot the state of violence and war.

And here we may advert to the very prevalent opinion, that political power can be given or taken away by the formal declarations of law makers. Many persons imagine that none have power in the body politic save those to whom the constitution expressly assigns it. Such are they, who in this country called, and are still calling for laws to exclude Roman Catholics from Parliament, and to withhold the suffrage from the working classes, in the belief that the former will thereby be stripped of their power,

and the latter hindered from acquiring any. How foolish and vain! It is true that such exclusion may secure to those enforcing it a certain degree of advantage; it will fix on the party excluded the reputation of being illegal and disorderly, and will give to themselves all the benefit of the opposite character. It will, therefore, attach to them, *first*, that considerable body of fearful or indifferent persons who always (or at least till it is dangerous) take the side of the legal authority; *next*, the command of that array of force which is always attached to the government; and, *lastly*, authoritative and skilful leaders in the persons of the officers of government. In short, the excluding party may gather some artificial strength by getting to act on its side that portion of the political force of the nation which is timid, neutral, or mercenary. In this way it may maintain itself in political superiority. But if those from whom constitutional privileges are withheld have a political spirit, it will be no more than mere superiority. Shut out by law from authority, these will still exercise political power. Not allowed to touch the reins of government they will still influence and control its career. Their presence will be felt—their importance owned—their opinion consulted regarding all its movements; nay, they may even come to resemble an Opposition in Parliament, which is sometimes the master of the government. But whatever advantage the predominant party gain from the exclusion of the others, will be wholly sectarian and factious; most dearly purchased with the calamities resulting from a constant interchange of social hosti-

lities between the excluding and excluded forces, by the time spent, and the public tranquillity and strength wasted in the struggle to maintain the legal monopoly of authority, and by the bad legislation and mis-government which are inevitable, wherever part of the power, of whose will public laws and public measures are the expression, is not allowed to speak clearly and fully in the public legislature.

These observations receive, I think, a very instructive illustration from the events of our own day.

It would appear as if the English constitution had at one time extended political authority beyond the limits of the political power then in being in English society. This seems true of those days when many burghs threw up as a grievance the privilege of returning members to Parliament. When the middle classes caught the political spirit, that privilege rose in value, and was eagerly reclaimed.[1] Soon, however, although employed thoroughly and skilfully, it was found that the constitutional authority vested in the Commons was not equal to the real power they

[1] In Scotland of old, where the real power in ordinary times was wholly in the hands of the great Lords and Ecclesiastics, the lesser Barons, finding themselves of no account in Parliament, ceased to attend it. But our annalists record two occasions where they deviated from this practice, and assembled in great numbers. The first was in 1555, when the Queen Regent proposed in Parliament to have the value of all lands registered, in order to impose a small tax to pay a standing force; the second was in 1560, at the convention Parliament, by which the reformed religion was brought in. The political spirit ordinarily so apathetic or timid, of a people naturally devout, and little used to public taxation, was at these times quickened and emboldened by their parsimony and their piety.

possessed, and thereupon a series of internal constitutional changes took place for the purpose of raising the social order to which they belonged to its proper rank in the body politic. The general aim of those measures was to limit the kingly prerogative, and reduce the king as such to a subordination to the Parliament, and upon this the popular power was employed during the seventeenth century, till the Revolution of 1688. This great question being then irrevocably closed, it would appear as if the Constitution, altered as it then was, had been substantially well adjusted to the political state of British society, more especially while broken and kept in trammels by the machinations of the exiled family. But before the close of the eighteenth century, the political force within the country had swelled very much beyond the measure of the legal constitution; all the channels provided by which, for collecting the will of the national power, had been possessed by the old political classes, now a limited, though strong oligarchy. Hence the great multitude which had sprung up around and beneath them, and whose thoughts were keenly fixed on political affairs, could nowhere find a fit legal organ for expressing its mind. When the war with France ended, the increase of population, wealth, intelligence, and taxation had made this band still more numerous, more ardent, and more resolute. And the inconvenience and peril of so huge a power being out of the constitution at last became such, as to wring from the fears of the monopolizing classes the great reform of the House of Commons. This was thought, at

the time, to have opened the door of the Constitution to the whole of the political classes. But it should seem there has been a miscalculation. For infallible signs declare, that beyond the legal limits there is still a huge and formidable mass of political power, which denied a direct means of influencing legislation and government, seeks to make itself felt by many irregular and unconstitutional methods. And who will blame them? Not the philosopher surely, who knows that however capricious individuals may be, multitudes are under the government of general laws, and that if they hold power, and see a motive to exert it, they will do so, under an influence as resistless (yes! and as beneficent) as that which causes the sea to ebb and flow.

It is instructive to notice the modes in which such unauthorized power vindicates its right to be heard. In ancient times it would have broken out at once into an open insurrection. But this is a disruption of the body politic, and a coarse and wicked expedient, to which it is happily not necessary to resort; means having been found out, and now reduced to the regularity of an art, of gaining the end more certainly and more effectually, yet without avowedly transgressing the bounds of the political relation. Of these means I will mention only the three most prominent.

First, There is, what I may venture to call an abuse of the right of petitioning the Legislature. Into the true constitutional use of this privilege of British subjects we need not curiously inquire; it needs no research to be convinced that it could not

be that, to which it is now not unfrequently put, namely, to excite the people, and overawe the Parliament. The simultaneous public meetings held for setting petitions on foot; the efforts to swell their numbers to the uttermost, and the ostentatious display made of the amount of signatures to them, all indicate that this privilege has assumed, through the mal-formation of the constitution, the character of an instrument of coercion, and petitions now convey to Parliament, not the wants and humble desires, but the puissant will of their promoters. It is worthy of remark, that when these tactics are practised by one party, they are carefully repeated by its opponents; and hence the ceremony of petitioning often resembles those displays of their armed resources by which rival nations support their diplomacy.

In the *second* place, there is the Press. Of the many uses which the political prints are made to serve, none I think is more common than that of a channel through which the political power in society, which has either no organ in Parliament, or one not adequate, may act upon legislation and Government. Not unfrequently, more especially prior to the Reform Bill, the public will was expressed through it with a determination, violence, and menace not to be resisted. And perhaps not one of the least advantages of that great measure was, that it partially removed the necessity then lying upon the British people, of placing so great a constitutional trust on so awkward an instrument as the Press. Most valuable is it as a public instructor, and most useful as an aid to the

people in forming their judgments regarding public affairs, and making resolves to be expressed and brought to maturity through other organs ; but very ill fitted to be a sort of " Fourth Estate ;" the leader under whom they range themselves ; the signal master whose motions they obey ; the right arm wherewith to compel the refractory public servants to do their will. To this perilous eminence of function, which indeed implies that the Representative branch of the Legislature is not answering its end, it is the necessary effect of a franchise excluding any considerable portion of the political classes, to raise the Press. And within our own memory there have been occasions in which the Press has actually holden, and in conjunction with another organ to be immediately mentioned, discharged that function for the people.

For, in the *last* place, I would describe as perhaps the most effective of these irregular methods of expressing the will of power, which has either no legal channel or an inadequate one in the Legislature of the body politic to which it belongs—voluntary associations for political ends. These associations have what may be called a legitimate and an illegitimate use. When employed to make men of the same opinion known to each other, and to bring about a union of their efforts to diffuse their opinions among others, they seem innocent or rather laudable. They have the same character when employed to inform the members of the Legislature of the present opinions of their constituents upon new measures undertaken, or new laws proposed by the Government. But when employed as a means of making an im-

posing and threatening display of the numbers by which a particular opinion is supported, of showing them as all in correspondence, under discipline, and ready for action, and when they proceed to express their opinion to society or the Legislature in its final state of will, and in the shape of a specific demand, with an implied threat of untold penalties upon refusal, they then are imminently dangerous, and indeed (theoretically) subversive of public order. Such associations have accordingly been the dread of all Governments. And not without justice, for what are they, or what are they capable of becoming, but organizations of force for political uses? And what is the Government itself but the head of another organization of the same kind? They are therefore within its province, detracting from what it must regard as its rightful power, alienating the confidence of its members and subjects, and tending to its overthrow. For this reason, Governments from the earliest times have proscribed them. They were illegal in old Rome, whose jealousy, indeed, of such associations has been thought by some to have been one motive to its persecution of the Christian Church. Even Governments comparatively free, have given clear proof of their instinctive discernment of an enemy in them, by their attempts to suppress or restrain them. But as the rigour necessary to do this effectually will not be endured in a free community, it only remains to disarm them of their dangerous character. This is done when the whole political force in the country has a legal and direct communication with the Legislature. It is only when

a part of it is, so to speak, stopped and thrown back upon society, that it collects in these repositories, and converts them into an organ of dangerous power. And to what potency this arm of political warfare may grow, this generation need not be told, who saw it, at the time of the Reform Bill, virtually supersede the legal Legislature; which was then little more than a court for registering the edicts of Birmingham and Glasgow.

The object in ill-regulated countries of all such means, is to make a display of the physical power of the party employing them, in a collected state, prepared to break up the political relation, and use the ultimate reason, if all else should fail. The process of secession is even begun, and the discontented force stands drawn up within the limits of the law, but just within them. The effect is to banish, for the time, the benefits of the political institution; a sensation of uneasiness and insecurity is sent throughout society, which knows not which of the rival forces to trust; there is everywhere a tendency to turbulence, and the legal Government is kept in a condition of anxious, expensive, and exhausting vigilance. In the background, threatening and obscure, may be seen war. But the necessity of taking the "tented field"[1] never arises where the demands of the ex-

[1] Wolf Tones' Memoirs. The Roman political history, till the completion of the popular liberty, is one long example of the employment by the classes, excluded from their due legal authority, of what in modern times would be termed agitation, and were of old styled seditions, in order to control the laws, and obtain political privileges.

cluded power are compatible with order, for the legal Government yields to them, conquered by that weapon which the high and sensitive civilisation wherein only such transactions can take place, enables men to wield with more efficacy than the sword itself—an obedience barely to the letter of the law, "a sulky, unaccommodating, complaining, constitutional loyalty." These are the striking terms in which one of the Irish leaders, in days when Ireland was yet an alien to the constitution, has described the means whereby a people, denied authority over public affairs, may enforce their will on particular occasions, and ultimately obtain a place among the legal rulers. They may paralyze the existing Government; or rather, they may present to it three choices —either to crush them by force of arms, or to abdicate the Government in their favour, or to share it

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Hence it was remarked, that although seditions were to be deplored, some had been justifiable, or even necessary, and that except by their means the Roman people had not been free. Cicero (de Orator., lib. ii., c. 48) makes Cato say, that "etsi omnes molestæ semper seditiones fuissent, justas tamen fuisse nonnullas et prope necessarias"—and that "neque reges ex hac civitate exigi, nec tribunos plebis creari, neque plebiscitis toties consularem potestatem minui, neque provocationem, patronam illam civitatis ac vindicem libertatis, populo Romano dari, sine nobilium dissensione potuisse." It has been remarked too, that the seditions, thus useful in perfecting and preserving liberty, seldom or never came to blows or blood, their own evils being sufficient to induce a people that knew the value of internal order, timeously to remove their cause. Hence the expression in Livy, (lib. vii., c. 40,) in reference to these political dissensions, "ultima rabies, *secessio a suis*, habebatur."—See Moyles' Works, vol. ii. p. 112.

with them. It is easy to foretell which will be preferred.[1]

If it be objected that the case just described is peculiar and rare, it may be answered, that it is now less rare than it was once, and that it differs not in kind, though somewhat in degree, from what is constantly though covertly taking place within political society. We obtain by it a trustworthy and clear disclosure of the foundation of political command. It shows it to be built immediately on physical power, working for its employers, not by destructive violence and bloodshed, but through the present social inconveniences that flow from that weakness of the public authority which their disaffection causes, and by the fear that the State may ultimately be dissolved altogether by their secession. Nor is the matter at all

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[1] Dryden, in his "Medal" inveighing against the patriotic malcontents in Charles the Second's reign, refers to their famous projected association, in a series of vigorous lines, some of which may be quoted in this place. Accusing them of a design against the king and kingly power, he asks,—

"What means their traitorous combination less,
Too plain to evade, too shameful to confess?
* * * *
In vain to sophistry they have recourse;
By proving theirs no plot, they prove 'tis worse,
Unmasked rebellion, and audacious force,
Which, though not actual, yet all eyes may see
'Tis working in the immediate power to be."
* * * *
"On utmost bounds of loyalty they stand,
And grin and whet, like a Croatian band
That waits impatient for the last command."

altered, when the old legal authorities, overcome by perceiving the inability of the power they command to conduct public affairs, admit the heretofore excluded party to share in the Government. As its entrance within the constitution was due to its physical strength, so is its footing there maintained by the same title. The same process which took place before, still goes on after the entire political force is enclosed within the bounds of the constitution, with this difference only, that it is now less turbulent and productive of more good. Regarding all the proceedings of the State, a reference more or less explicit is still made to the opinions of the possessors of force; and in whatever way the greatest number, that is, the greatest force, inclines, thither the State must go. Not indeed that talent, wealth, birth, or the other qualities on which influence in society attends, are totally inoperative within the body politic. But their influence is secondary and subordinate. They are titles to leadership or to offices of trust. They enable their possessors to direct the State, by determining the opinions of the holders of force. But, failing in this, they are as inefficient as the idle wind. Wise men may endeavour to persuade the political agents; rich men try to corrupt them; factious men to inspire them with disaffection; ambitious men to seduce them with flattering projects. Every kind of influence and every variety of means (short of actual violence) may be at work within the State. Still the decision must rest with but one party. After the competitors for political objects have exhausted all their influence, after they have made some men zealous,

others apathetic, damped the courage of this man, changed the opinions of that, corrupted one and deceived another, the question put is, not what is their will, nor what the will of the noble, the wise, or the wealthy ; but what is the will of those having most power. But these are no other than the greatest number of the whole persons, superior and subordinate, who are in political action. And if the body politic is to be maintained, which can be done only by obeying its natural laws, the will of that number, whatever may be its character, must always be allowed to determine what is public law.

Perhaps it may serve to make more clear the substantial truth of our general principle, if we apply it to explain the nature and working of constitutions.

It is a rule of political art, that governments ought to see that the whole political dependence of their subjects is placed exclusively in themselves. For this, however, it is not enough merely to command subjects to be dutiful and loyal. It is farther necessary to concentrate all political strength in the constituted authorities, allowing within the State no separate persons or body to exist, to whom subjects can look for the least political benefit. Now, to form this monopoly of strength, it is necessary that the supreme political authority, meaning thereby the legal right to issue laws, and provide for their execution, should always be lodged with those who possess supreme political power, in other words, who compose, or have the control of, the force by which the body politic operates. But it is quite possible, and indeed often happens, that the supreme autho-

rity and the supreme power may be in part or wholly disjoined from each other. Let us make a distinction between legal and actual political power. The latter consists of the physical power of the whole members of the society who are in political action, that is, engaged in endeavouring to direct public measures. The former denotes the power of that portion of the community which the law recognises as entitled to be in political action, and to whose will regarding public measures it provides for giving effect. But these two sums of power may be different both in their amount and in the persons composing them, and hence some curious anomalies may arise. Thus the law may confer a certain political authority, or a given rate of legal power, on a man who is not in political action. But in this case the legal power will be utterly inoperative, unless indeed its holder is the political tool of some other person, and by him is made a real power by being excited to political action. Suppose, for example, the electoral suffrage were made universal; it does not admit of a doubt that, even in this country, multitudes would get political authority who, if let alone, never would exercise power, and who when roused to do so, would act as the mere servants of him who brought them to the poll. Thus our law gives the suffrage to certain bodies of English freemen, composed of persons destitute of all native political bias, and so utterly brutal and venal that their votes are regularly bought and sold; and their political authority wielded by their purchasers. Thus also the suffrage has been granted to the class of

farmers, who often have, but dare not exercise a political will, but are compelled, in electing, to act simply as the tools of their landlords; in whom accordingly their power ultimately lodges. In these cases the law designates one set of persons as those who possess political authority, whereas, in fact, the power is either non-existent from their political apathy, or is called into being, and wielded by another person, of whom they are the tools. Again, the law may confer equal amounts of political authority upon persons or bodies who have unequal amounts of political power. A familiar instance is that of our two Houses of Parliament, which have legally equal authority in legislation, while, in fact, the power of the Lords is considerably inferior to that of the Commons. Another is that of a landlord, who, if a Commoner, has one vote for the County Member, and so has each of his tenants. But in truth, the latter have no power, and the former has a great deal, namely, all that the law assigns both to himself and them. Once more, the law may withhold political authority from those who have political power. This it does in this country, when it prevents landlords who are peers from voting for Members of the Commons House, while, in truth, they have at least as much power in that matter as they have electing tenants; and also, when it refuses the suffrage to the many men of political intelligence and activity, who have not the ten pound qualification.

Such anomalies are not only very perplexing, but often very mischievous. Not so much that they produce a different expression of the public will or laws,

from what would take place under a better ordered constitution, for, I believe, that their effect in this way is comparatively feeble, at least in countries where public opinion can be freely manifested; but that while they exist, there is, of necessity, a perpetual agitation in the body politic, from the efforts made by the real holders of power to attain their due influence in the formation of the national will or laws, and from the doubt which must ever remain as to whether the will, ultimately announced by the public authorities, is really that of the power of the State. The Constitutions, therefore, in which they exist, are obstacles to political tranquillity, and so far fail of their end. Constitutions are the means of consulting the political power existing in the society; of collecting and embodying its prevailing will, in that modified and adjusted shape in which it carries with it the sanction of an overwhelming preponderance; and then declaring it for law. Wherefore, to serve this end properly, they ought not merely to be in fact, but visibly to appear to be, true and accurate organs of the political classes. This is their real excellence. When they fit political authority closely and accurately to the body of political power as it exists in each particular nation; when they give the right of legislation and government to the holders of physical power there in political action, and provide that the ultimate resolution shall always be dictated by the greatest amount of that power, they have attained all the perfection of which they are capable. I am aware, indeed, that a different opinion is widely entertained. Constitutions are thought

to be the means of conferring political power: as these distribute authority in society, so men imagine power will be actually enjoyed in the State; and they pronounce one form of Constitution to be good, and another form to be bad, not according as they are true or false organs of the power existing in the body politic, but from a supposed virtue in them to put power into good or bad hands. But these ideas seem to be unfounded. I do not deny that if a people should adopt, or have imposed upon them a particular constitutional form, they may make an effort to conform themselves to it; and if they succeed, if it embues them with a political spirit corresponding to its own arrangements, it may *produce* the distribution of power, which it enacts as legal. But if it fails to implant the political will, (which is likely,) it will shew itself ere long to be a mere dead form; and if not wholly cast off, it will be greatly altered; those parts to which there is no corresponding life in the body politic, will wither away; new parts will be put on as organs of power which it overlooked or forbade to exist; and, in the end, it will be moulded to such shape and size as befits the substance of which it is the clothing.[1]

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[1] Aristotle observed this occasional difference between the legal form and the real nature of governments, and ascribed it to the habits and manners of the people prevailing against the provisions of law. Politics, iv. 5. Ου δει δε λανθανειν ὁτι πολλαχου συμβεβηκεν, ὡστε την μεν πολιτειαν την κατα τους νομους μη δημοτικην ειναι, δια δε το ηθος και την αγωγην πολιτευεσθαι δημοτικως, ὁμοιως δε παλιν παρ' αλλοις την μεν κατα τους νομους ειναι πολιτειαν δημοτικωτεραν, τη δ' αγωγη και τοις ηθεσιν ολιγαρχεισθαι μαλλον. Συμβαινει δε τουτο μα-

Hence we are to look for the explanation of constitutional forms to the social condition of the people among whom they exist, and according to the character of the latter may pronounce what ought to be that of the former. Upon this principle, we shall find, that now a despotic form, now a constitutional monarchy, now an aristocratical, and now a democratical form is proper, because each in its place and time accords more accurately than any other with the situation of power in the nation. It may be, indeed, that in point of fact, the form and the power are not everywhere exactly accordant; but the disagreement is unnatural, and, we may say, almost always pernicious; and as it can be owing only to accident, or some artificial influence, it is impossible that it can long continue.

First, There is a social condition into which a people may be brought in various ways, but in which, by whatever route they reach it, they invariably present one general character of political apathy and servility. Sometimes the immediate cause is the physical wretchedness in which the great mass is living, and which closes their minds against any ideas but those relating to their pressing personal wants and passions. But more generally, along with a low physical condition, there is an acquired mental emasculation; the idea of the political relation is not

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λιστα μετα τας μεταβολας των πολιτειων· ου γαρ ευθυς μεταβαινουσιν, αλλ' αγαπωσι τα πρωτα μικρα πλεονεκτουντες παρ' αλληλων· ὡσθ' οἱ μεν νομοι διαμενουσιν οἱ προϋπαρχοντες, κρατουσι δε οἱ μεταβαλλοντες την πολιτειαν.

absent from their minds, but superstition or the national traditions and habits, have taught them that it makes them slaves; the absolute power of the sovereign is a sacred and holy thing, and the sovereign himself an earthly divinity. Hence, in such countries, the sole political agent is the sovereign; his force alone is in political action; for although ministers and other functionaries, civil and military, are employed to declare and execute law, they are simply his slaves; they feel and own themselves to be such; they have no will or standing of their own, but submit to rise and fall by a word of his mouth, and hold his power to be resistless as fate.[1] These remarks do not apply to some countries which have been reputed despotic, and over which military leaders have been seen exercising supreme power, upheld by their armies, and enforcing their will by military execution. Wherever such means are employed, it is evident that the sovereign is not absolute; his sovereignty is disputed. There is independent political life and a resisting political force in the community, and his single rule is not natural but alien to it. There, indeed, there is no body politic, but a state of war, and the Government is not so much a despotism as a conquest. But in the truly slavish community, the authority of the sovereign is not

[1] That revolutions of State proceed from personal intrigues, and that men submit without a murmur to be tumbled from the chief offices to the most menial conditions, by a mere word of the Sovereign, are characteristics of such nations as Turkey, China, &c., very astonishing to the native of Britain.

questioned. Looking all round the horizon, he discovers neither an equal nor a second, and there, accordingly, his force, personal and official, being the sole power in political action, the constitution necessarily and most appropriately takes the despotic form, vesting all authority in him and his ministers.

Second, Directly opposite to such a social condition, is that, where a multitude of men are politically active, and where each man is a single and independent agent, being neither the political servant or tool of any man, nor having any political tools of his own. This, I conceive, to be the true characteristic of the democratic community. It is not, on the one hand, a condition of liberty; because, although liberty is more natural to it than to any other society, there have been and there are not only laws restrictive of freedom, but actually bodies of slaves in democratic nations; and not only personal slaves, but these in a more thorough and hopeless slavery than exists anywhere else. For it is necessary that if slaves exist there at all, they shall exist as mere things. They must have no moral, and especially no political existence. Never, even as tools, must they be brought into public action. In the enumeration of powers they must never be reckoned, even to their masters. For the political feeling of the community requires that the possessor of a thousand slaves should have no more power than the possessor of none. Add to this, that, although vassals will act with their lords, slaves always act (when they can) against their masters. Whence the interest of the latter joins with the general sense of the community to keep

them out of political action.[1] But as slaves are human beings, they cannot be made such political non-entities in an actively political community, except by being made a thoroughly degraded caste, and not so much a caste as a mere herd or multitude of animals, without the knowledge or the morality of savages, nay, without even the decent and orderly habitudes of the more intelligent brutes. Hence there are either no personal slaves, or the most debased species of them in democratic nations.—Neither, on the other hand, is equality among those not slaves either in respect of general condition, or even of political power, the true characteristic of the democratic community. Not *equality of general condition*; for not to mention that such equality obtains (as M. De Tocqueville remarks) in some populations under despotism, the democratic community may be composed of rich and poor in nearly every gradation, and, in fact, it interferes with property no farther than to forbid such species and tenure of it as confers on one citizen permanent political command over another; Nor yet *equality of political power*, for although such equality does always exist in, it is not peculiar to a democratic community; but may be

[1] For this reason I can very easily believe what is told us, that the efforts to emancipate the slaves in North America have led their masters to *brutify* them more than ever, by a more rigid exclusion from the means of education, and harsher treatment. In ancient times, the slaves in Crete were much better treated than the helots of Sparta, because, as Aristotle remarks, the former, enclosed in an island, were not like the latter, accessible to the enemies of their masters.

seen also in one that is aristocratic; for there the members of the ruling class may all be equal to each other. In short, the true and peculiar mark of a democratic community, and the source of all its virtues and vices is, if I may coin a phrase, the individualization of power.[1] The political power within it is

[1] Equality is the necessary consequence of the individual legation of power, and so a democracy invariably assumes in its constitutional arrangements equality as characteristic of the citizens. As no other form of government does so, equality may be said to be the fundamental idea of the democratic government. But the equality must be that which springs from individualization, in so much so, that where this last does not exist, the democracy is impossible. Strictly speaking, the equality need be merely that proceeding from the power for coercive ends, which belongs to each man naturally. But there is a tendency in democratic communities to carry the idea beyond this, and to assume the citizens to be equal, not merely in respect of power, but of capacity for the functions of government. In the ancient democracies, where representation was unknown, this idea prevailed so far as to give rise to the absurdity of choosing men to office by means of the lot. The device of representation reconciles in modern democracies the possession of equal power by all the citizens, with a selection of the wisest of them to manage the public business. Such selection in no degree implies any undue elevation of one citizen above another. But obvious as this is, every appearance of inequality is regarded with jealousy by ultra-democrats, who would fain believe and enforce the doctrine, that all citizens are on a level, not merely in respect of power and right, but in respect of capacity also. Some recent proclamations of the Provisional Government engaged in founding the democratic republic of France, express with clearness the fundamental idea of a democracy, and give evidence also that their authors were not altogether guiltless of that perversion and abuse of it to which we have referred. They express its idea, when in an address to the French people regarding the Provisional Election Law, they say, "The election belongs to all without exception. From the date of this law there are no more subjects in France. Every Frenchman of virile age is a political citizen. Every citizen

composed of a multitude of persons, each his own master, and each carrying into the political strife nothing but his personal force. And yet these are not so independent as to have no common object; for then they would be a mere ochlocracy or anarchical populace. On the contrary, they have ever present to their minds the idea of their union in a State which they love to picture as one and indivisible, and they regard its dissolution as the most terrible of evils. Neither though each is his own master, are they without leaders and followers; but leadership is the reward of merit; and as it is conferred by the free rational choice of the party, so it terminates the instant that its preference is withdrawn.

Such being the political condition, it is very easy to see what must be the constitutional form of this community. The legislative assembly will, if the nation be small, consist of all the political agents; if it be large, of representatives. These will represent, as nearly as may be, an equal number of persons, and each counting one, a simple enumeration will suffice to ascertain what is the will of the political

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is an elector—every elector is sovereign. The law is equal and absolute for all. There is no citizen who can say to another, You are more sovereign than I."—*Morning Chronicle, March* 18, 1848. Again, they manifested with equal clearness that they were infected by the error and abuse of the democratic doctrine, when in previous addresses respecting the elections, they told the electors, that citizens of the working classes were as fit for the office of representatives as those of a more educated class, and exhorted them indeed rather to prefer the former to the latter in disposing of their suffrages.

power. The executive functionaries, again, will, like all other democratic chiefs, be elected, and for a limited period. And if the Constitution has two chambers of legislation, and gives a suspensive veto to its elected head, the sole object of this complexity will be to secure deliberation prior to the final resolution.

Third, There is another social condition of a people very distinguishable from that just described. It exists, when either from the territory being apportioned in large shares among persons somewhat numerous, yet few in number compared with the whole nation, or from the population being divided into families and tribes, there is found a number of leaders or chiefs, all independent, and all having attached to them bands of hereditary dependents. These dependents are above the condition of slaves, yet below that of masters; and hence, although not permitted usually, and indeed not desiring, to exercise freely a political will of their own, they are not yet doomed to political non-existence, but, on the contrary, are brought out as auxiliaries by their respective chiefs or lords. Now, when laws are to be framed for a society so composed, it is plain that those chiefs to whose wills the whole political force is attached hereditarily, will be the perpetual law-givers. And each of them will have ostensibly an equal voice, for although they will probably not be all truly equal in power, yet the inequalities among them will, at the outset particularly, be incapable of exact measurement, not to mention that a Constitution adjusting precisely each man's authority to his power, would be

too intricate for that rude age. They will, therefore, form one assembly for law making, and will act executively by a council and chief chosen from amongst them. If, however, the inequality should either at first be, or in process of time become very marked, probably the greater lords will monopolize the executive authority, or the inferior will sink down into the mass of dependents, or in some other way lose their original equality of authority. But should they still retain it ostensibly, it is not to be doubted that by stratagem, intimidation, or corruption, or by open violence, the greater chiefs, or those who command the greatest amount of the political force of the community, will contrive to control the resolutions of the State.

Fourth, Now, let us suppose a country in which the two conditions of society just described—the democratic and aristocratic—shall exist together, and observe what must take place from their union in one State. Most manifest is it, that there will be, along with several common interests, several causes of separation and jealousy. The political construction of the two parties is different. In the one, power resides hereditarily in a few men, each of whom commands a great mass of force by a species of personal title, the consequence of ancient rank and property. In the other, it is split into as many equal shares as there are single men, and it forms itself into a mass only when and in so far as its holders choose to unite. The social pursuits of the two must necessarily be equally diverse, for although a democracy of landholders is possible, yet hardly in the same State with

an aristocracy of landlords, and, consequently, wherever there is a landed aristocracy, if a democratic community springs up, it must subsist upon trade and commerce. Hence the condition of the one party is stable and inactive; the same wealth goes down from father to son, and its successive possessors are accustomed to honour, dignity, industrial inaction, and political command from their very infancy. But, in the other, all is activity and change; wealth, besides being of a different kind, is perpetually growing or falling away, and perpetually changing its owner; the condition of the father differs from that of the son, of the son from the father, and political dignity and leadership is hard to win, hard to keep, and not at all capable of being inherited or transmitted. Here, then, are strong political differences, and if not a contrariety, at least not an obvious concurrence of general social interests. Hence, when the whole number of political agents in such a complex community set about the concoction of laws, they must split into two bodies. The aristocratic lords, each a mass of power in himself, will not meet and mingle on the same floor with the democratic multitude, each of whom is a simple unit. On the contrary, the scattered portions of each sort of power will coalesce and form an estate of their own. Each will have its own organ, and this separation, effected by the antipathy in their political construction, will be confirmed by the devotion with which each pursues its peculiar social interest.

But while antipathetic in these respects, there are several others in which they are united. First, they

are at one for purposes of national defence; Secondly, they are at one for the purpose of executing the national laws upon which they have come to an agreement; Thirdly, they are at one as to the necessity of peaceably maintaining their union in one State, and, consequently, of keeping their devotion to their peculiar class, in subordination to their allegiance to their common country. Now, these three feelings (to mention no more) occasion a new combination of political force, distinct both from the aristocratic and the democratic party. A vast majority of the persons composing the one and the other will invariably act for these purposes without jealousy and as one man. Nay, at least for one purpose, namely, the national defence, the vassals of the aristocratic lords will cease to be tools or followers, and move as independent agents. Hence in State affairs this great new combination of political force will speak neither through the aristocratic nor through the democratic organ, but must have one of its own. And in such a State, the aristocratic body will so far predominate, as to constitute that organ on its own personal and hereditary principle; and hence a Sovereign Prince or King—carrying with him the force of nearly all the people, in all that concerns the public defence, honour, tranquillity, for the vindication of right and justice, and as the moderator and umpire between the internal discordant powers, in their contests for the guidance of the State.[1]

[1] How the powers of the constitutional monarch have grown out of advancing civilisation, may be seen in Mr. Allen's learned and instructive *History of the Royal Prerogative in England.*

In such a community, it is evident, that laws and public measures are not dictated directly by the simple will of a majority of a homogeneous people, but are the result of the conferences and capitulations of distinct and independent classes. Hence a necessity for separate legislative chambers, and for that complex fabric—the constitutional monarchy of modern times. This is never, as some imagine, a mere artificial device for securing wise legislation and government. It is a slow growth from the manners, opinions, laws, interests, and events of a long period of time. It exists by force of circumstances; being what it is by virtue of the manner in which political power is disposed in the society of which it is the political form.

The theory of such a constitution is, that the several estates in the nation shall separately and independently speak through their own organ, each of which is endued with equal authority in legislation. But a little consideration will make it plain that such equality will rarely exist in reality. The reason is, that in political force, that is, in the number of political agents attached to them, equality, if it could be instituted, (which seems impossible,) or should chance to take place, (which is not likely,) could neither last naturally, nor be maintained by art. And whenever inequality arises,—when, for instance, the numbers of the democratic class becomes greater in any sensible degree than those of the aristocratic, the constitutional organ of the larger will, though legally equal, be, in fact, superior in power to the organ of the smaller. And having such superiority, it will exert it. But as it cannot do so by means

within the constitution, as no process of weighing instead of counting the votes of the estates is known; the strongest authority, be it democratic, be it aristocratic, or be it the monarch, will vindicate its superiority by working upon the organ of the weaker, and will, by fair means or foul, subdue it into a subordination in making laws, proportioned to the actual inferiority of the power which it carries with it. Hence, whatever may be the theory of the constitution, the actual result will be, that, by a variety of circuitous, corrupt, or violent devices, those men or bodies who lead the majority of political agents of all sorts, will have the predominance in the affairs of the State. And at the long run, here nearly as exactly as in the simple democratic constitutions, laws will express the will of the majority of the whole persons in political action. But in order to effect this result, and to correct the error frequently committed by the more complex constitutions—of attaching equal authority in legislation to persons or bodies unequal in political force—many unseemly anomalies will be created, and much harassing agitation will take place. We shall have in the chamber of the democracy the servants of nobles; or in the hall of the nobles, tribunes of the people; while beyond the legislative chambers, a thousand means will be set on foot to oblige the legislature to adopt as its own the will of the supreme political power. In the end it will come clearly out in the working of this and of every constitution, that the balance of political power follows the balance of the physical force directed upon public measures. And by this

rule, slowly perhaps but ultimately, the supreme legal authority will be visibly adjusted.

I might proceed to explain in the same way the other forms which constitutions have assumed in different times and places. But enough, perhaps, has been said for our present purpose, which is to show that constitutional forms are in a very slight degree the cause, and in a very great degree the effect of the way in which political power is distributed in the nations where they exist, and also to reduce into clearness and precision our ideas of what constitutes political power and of what are its laws. Nor does it seem difficult to sum up in few words the conclusions on this subject deserving particular notice. We have seen reason to conclude, *First*, that political power consists of physical power employed in determining peacefully the resolutions of the State; *Secondly*, that political power is distributed among the members of a community in proportion to the amount which each of them commands of the physical power of which it consists; *Thirdly*, that political power owes neither its existence nor its particular distribution among a people to the mere laws and constitution, but is the effect of all those circumstances and influences operating generally from remote periods in a nation's history, by which the character and relations of the men composing it have been moulded and determined; *Fourthly*, that the allocation or distribution of political power, of which experience gives us notice, may be reduced to three simple states. The first is where political power is individualized;

being the result of a condition of society in which all the members of the community, of whose physical power the whole political power is composed, are single and independent political agents, and so command each only an individual portion of the power in political action. The second is where political power is feudalized or *clanified*, being the result of a state of society in which the physical power employed in directing the public councils is divided into masses, of which each obeys the will of a leading head or chief. The third is where political power is monopolized; being the result of a state of society wherein the whole physical power by which the State operates is attached to the will of a single person. The state first mentioned is the democratic condition of political power; the second state is the aristocratic; and the third is the monarchic or autocratic. And the tendency of each of these social conditions to a corresponding form of constitution is so strong, that to establish a democracy, where the society is in the aristocratic condition, or *vice versa*, is to introduce an incongruity or antagonism between the disposition and wants of the people and their institutions. *Lastly*, we have seen that a nation may present in its social condition an amalgam of the three simple modes of the distribution of political power, or of any two of them, and that now in one proportion and now in another. In which case the natural constitutional form of the nation will show a corresponding commingling of democracy with aristocracy and monarchy, or of two of them, and in such proportion as the condition of the society demands.

One remark more before quitting this topic. It has appeared that political power is a property or appendage of persons, and that, like other such properties, it depends on the will of its possessor whether it shall act at all, and in what degree of its possible energy. It has appeared also, that political power does not require to be recognised and legalized by the constitution, in order to exist and operate in a State. In farther explanation of the practical working of constitutions, we may here add, that the recognition of such power by the laws, and the provision of a constitutional organ for its operation, will not ensure that it shall act either continuously and steadily, or always with a fixed measure of energy. Owing to the variableness of the wills to which it is attached, power, even when recognised and invited to act, will often lie dormant, leaving the State to the direction of some other portion of the common power of which the possessors feel interest in the matter in hand. Sometimes, again, it will act, but more feebly than the constitutional authority provided to it would have allowed, while sometimes it will act with an energy quite equal to its legal authority, and even beyond it. In this last case, the power recognised by the laws has recourse, in order to make itself fully felt in the public councils, to the arts and devices constantly employed by unrecognised power for the like purpose—namely, the Press, petitions, meetings, associations, deputations, &c. We speak, of course, of free countries, where such voluntary irregular methods of manifesting political opinion and political

power are tolerated and in ordinary use. And with respect to such countries, I venture to express (what will seem, I daresay, an obnoxious political heresy,) that full liberty to employ such means, and a constant use of them by the people, are things far more conducive to freedom and good government, than mere theoretical perfection in the system of electing legislators and governors. A constitution extremely imperfect in this respect will, nevertheless, serve as the organ of the popular will, if the people be enlightened and high-spirited; while the most perfect constitution will not ensure a people that lacks those qualities against a dynasty of ambitionists, oppressors, and peculators. Too much political virtue is ascribed in these days to abstract rights and mechanical arrangements; too little to the real powers and vital energies at work in society. An avoidance of this common error would allay much discontent, and moderate much irrational ardour. For example, it would, I think, considerably abate the vehemence of the demand made at present in this country for universal suffrage, and equal electoral districts, as for things essential to its freedom and prosperity. Universal suffrage, or a system approaching to it, is the most fitting and expedient arrangement where political intelligence and public spirit, and consequently political power are very widely diffused. An extension of the suffrage in this country is, therefore, doubtless necessary, in order to put the constitution into harmony with the condition of our society. But those who expect from the change any material alteration in the character

of our legislature and the measures of government, are unreasonable, and would probably be grievously disappointed. Let it be considered, that all of what I have called the irregular organs of political power act at present in this country upon the Legislature and the Government with all possible freedom, and with an energy perhaps greater than that they would put forth if the suffrage were less restricted. An extension of the suffrage would not increase the potency of those organs of the popular power. And yet they are the means by which chiefly the people control the Legislature and the Government. It is by them chiefly that the legislators of a free people learn what it thinks, what it wants, what it will do, and what it will not suffer to be done. The mere process of election is but an imperfect instruction to a representative how to act, and a feeble guarantee to his electors, that he shall act as they desire. For what is an election of legislators useful and desirable? Simply because by making them owe their places in the Legislature to the pleasure of the power of which it is the organ, it gives some assurance that in legislating they will consult and obey it. In this country, therefore, the constituencies by whom the Commons' branch of the Legislature is chosen, ought to be popular. But to create constituencies sufficiently popular to secure a choice of representatives of congenial character and sympathies with those of the commonalty of these kingdoms, who, though a free spirited, are far from being a democratic body, an extension of the suffrage, much short of universal, and an arrangement of districts quite neglectful

of equality, would suffice. Indeed, it may be fairly questioned whether the present arrangement of the suffrage, anomalous as it is, and open to a thousand objections, does not accomplish that object as effectually as any other system would do in the present condition of British society.[1]

I am anxious to confirm the truth of the general proposition maintained in this chapter, by applying it to the explanation of some other phenomena in the political world; and, if in doing so, I shall be guilty of some repetition, I trust that the importance of the subject will obtain my pardon.

(1.) In the *first* place, we discover from it the reason and the justification of the great constitutional authority assigned to landholders in certain communities. In these, as, for instance, in our own, land is by reason of primogeniture and entails, aided by the aristocratic bias of the people, divided among comparatively few persons; some of whom hold very large portions of it. Hence those persons are, by the connexion of their possessions with the substance of the

[1] Universal suffrage would augment the democratic portion of the electors, by admitting the working classes in the manufacturing districts and large towns. But it would add at least as many to the aristocratical portion of the electors. The peasantry of Ireland would follow their priests, their landlords, or their agitators; the rural population of Great Britain would adhere to or be led by the gentry. Probably, too, the upper classes in the democratic districts would incline towards the aristocratic party, while the internal divisions of the aristocracy would be healed. These considerations render it not improbable that, in the present condition of British Society, universal suffrage would give us a House of Commons not more but less democratic than the existing system produces.

State, politicians themselves; while, on account of the extent of their domains, they are commanders of a large mass of physical force; having at their back for political uses the whole inferior occupants under them. Whether this command is inseparable from landed property, or, like a similar control once exercised in religion, may give way before knowledge and virtue, is doubtful. I rather think it will not; because territorial property has a relation to political action, but not to religion, and though the latter may be disconnected from it, all that can be done in regard to the former, is so to adjust land as to put its political influence into the proper hands. Passing this, however, we observe that to the mass of ignorant or at least servile force under the command of landlords, they give a political direction, and in public contests they find themselves by an acquired or an hereditary title, masters of a strength which makes each count not one simply but many. This holds true not merely of the greater lords, but proportionally of the whole body of landowners. Hence the whole number are, from the earliest period, in political action, and with their whole force. And as they all derive their station as leaders, not from their merit, but from wealth and rank, they employ their power in the support of the same species of authority in the State, and are the main stay of the aristocratic rule.

It is manifest, that if the constitution attempted to limit the authority of such persons, if it treated each of them as a simple unit in power as he is in person, it would commit a very gross blunder. Every one

of the great lords of England holds a great political power, by a title of which nothing will deprive them which leaves them their possessions. Change the constitution as you may, they will still be among the chief rulers. And the justification of a House of Lords is, that, seeing that there is this class of men, born to an inheritance which gives them power, it calls them together into one place, clothes their force with a constitutional authority, and obliges them to exercise it in the face of the nation. Whether having thus given to them personally a large constitutional authority, it should allow them farther to choose by their dependants (the farmers) members of the House of Commons, is a question that turns upon the proportion borne by their whole force to the whole political force in the nation. Possibly the whole authority which the laws do thus attach to them, directly and indirectly, is larger proportionally than their whole actual political strength. In this case, it must be the cause of some ill working of the political machinery. But whatever may be proper in regard to landholders who are members of the House of Peers, with respect to those who are Commoners, nothing could be more inexpedient than to disfranchise, as has been proposed, their tenants and dependants, on the ground that they are mere tools of their superiors. For whether from personal intelligence or by an external impulse, the fact is, that their tenants and dependants are in the political mêlée. Their strength, willingly or unwillingly, is in the strife, for their landlord is there; and the

principle of a sound constitution is to give legal authority, not solely to independent, or intelligent, or just political power, but to such power barely and simply as power. Any such disfranchisement would cause a mal-adjustment of the constitution to the existing condition of society. It would disgust and enrage the landed class. It would drive them to combinations and cabals to assert their standing in the Constitution. And these in the end would certainly be successful.

Nor am I sure that greater credit is due to another popular device for nullifying the political control of landlords over their tenants, in the affair of electing representatives, I mean the ballot. Granting that the ballot may be rendered perfect as respects secrecy, would it be useful? To answer this question, let it be observed, that the ballot protects a man in only one of his political acts, and that it is provided specially because it is surmised, that if obliged to perform that act, that is, to vote in public, he would vote against his inclination and his conscience. Suppose the surmise to be well founded, and it will follow, that the whole of the rest of the voter's political behaviour, not having the cover of the ballot, will either run counter to his secret elective vote, or, at least, will not concur with, and enforce it. Members of Parliament are elected in this country every fifth or sixth year; in the interval between one election and another, those voters whom the ballot is intended to free from dependence, are either passive in politics, or act with those who control them. They therefore would give no support

to the representative they had been the means of electing, by the local manifestations of public opinion which are constantly going on. They would leave the field to be occupied by his opponents, and the whole artillery of meetings, petitions, deputations, &c., to be employed against him, not only without resistance, but sometimes with their apparent approbation. The result would be, that judging from the ordinary manifestations of political opinion in the locality, the election would seem an unaccountable phenomenon—the person chosen to be no true representative of the constituents, and for that reason entitled to little authority or consideration in the councils of the State. To make our meaning clear, let it be supposed that the inhabitants of Sutherlandshire took advantage of the ballot to choose a representative opposed in politics to the Ducal Proprietor of that county; it is certain that the act of his election would stand alone; it would not only contradict the whole previous political character of the district, but the whole subsequent; and not merely its political opinions as manifested by all other acts, but the daily political influence brought to bear upon Government by the real masters of the political force of the district. If it be said that in this the ballot would but fulfil its purpose, which is to emancipate voters in such counties from political vassalage in the duty of voting, and obtain from them an honest vote, and a representative according to their true mind, it may be answered, that this assumes the opinion which the voters express through the ballot to be one backed by no real active power, but a secret, timid opinion,

shunning the light, and fruitful of no manly deeds or heroic sacrifices ; and that to confer on opinion of this character, the high prerogative of nominating the Legislators, is a great political mistake. It is to bestow on mere opinion, the office which in the body politic is due only to opinion upheld by an answering power—a visible, tangible array of political agents. If it should ever happen that the composition of the Legislature became, in consequence of the ballot, materially different from what open voting would have made it, the Legislature would cease to be the organ of the power of the country, would lose its credit, and would be either subdued or displaced by some other body possessing the confidence, and speaking the will of the real holders of the public force. The intimidation to which open voting exposes some electors is an evil much to be deplored. But the remedy of concealing men's votes is, in a political view, an evil still greater, because to the extent to which it is effectual, it would produce a representative body unfit for the function of a Legislature, which is then only fitted for its purpose when it faithfully reflects not the mere wisdom or the honesty, but the active public power of the community.

2. Here also we may discover the reason, and a partial justification of the political authority accorded to the Church in many States. The distinction between Church and State, now so familiar, appears not to have become visible till the rise of Christianity. To the Greeks and Romans, the idea of a religious society with distinct government and laws of its own, seems never to have occurred ; and in such other

ancient nations as were orderly enough to present any determinate construction, the very opposite notion would seem to have prevailed, the State as separate from the Church or religious society, being in its turn unknown. Since then, however, the National Society, formerly one and indivisible, has been split into a secular and a religious interest. Ever since admitting the distinction, men have held one fair result of it to be the exclusion of religious officers from authority in political society. One reason for this may have been, that for the same persons to rule in both Church and State, would be practically to obliterate the distinction between them. Another and stronger is the peculiar nature and object of a Church, and the incongruity between the functions of a church officer, and the functions of a politician. And yet if the body politic has, as many believe, the charge of the whole moral and physical wellbeing of men, it is difficult to detect the incongruity, or to divine what should disqualify the clergy from taking a large, nay, the chief share in its management. The instinctive dislike to their interference is explained when the body politic is known to be simply an association for the government and application of physical force. This is a weapon which they, as churchmen, have forsworn. The religious society disclaims the use of it; and indeed its peculiar end implies, that she has not only no occasion, but is bound not to employ it.

But a Church having authority in the legislation and government of the body politic, is a Church employing force. It is a member of an association that

works by physical coercive power. This is the incongruity. Nor is it excused by pleading that they are just and good ends for which it interferes. Still the manner of interference is (so to speak) to take hold of the sword. Besides, while the need of its interference is not apparent, this is certain, that, having once taken the command of power, the Church will (if it can) pervert it from its proper to improper uses—from the service of the whole nation, as secular, to the service of the clerical interest. Because so fascinating and exclusive is its influence, that its officers always, and sometimes all its members, see no object in the world but the Church, and constantly and unconsciously strive to put all persons and all things under its feet.

Hence has proceeded that strong aversion to the Church and Churchmen having political authority, which has existed in every community that blind fanaticism has not plunged headlong into utter confusion. Nevertheless, with what may at first appear a strange inconsistency, the Church has in most countries been vested with such authority. The explanation is to be found in two circumstances. One is that, in most countries, the Church has been allowed to become a great landed proprietor. Hence its functionaries have necessarily been drawn into political affairs. And along with them they have carried not only their dependents, as officers of a territorial lord, but many other persons throughout society bound to them by the tie of religion, and who, more especially whenever they could allege any pretence of piety, were their ardent supporters.

This is the second cause. And the two together—the territorial and the religious influence of the Church—as they have enabled it to bring an overwhelming force to bear on the settlement of the public concerns in which it took part, so they have procured for it a high standing among the political authorities of Christendom.

In gross and ignorant ages, Churchmen were inclined of themselves, and were also invited and encouraged by the fanaticism of society, to push Church authority over all men and all affairs, and to whatever they laid claim, they could win their way, by bringing into play the whole physical energy of those whom superstition had surrendered to them as slaves. Hence the other possessors of political authority—the King, nobles, and the rest of the community—were deeply interested in rendering this formidable sharer in the force by which the State works, as innocuous as possible, since they were not able to destroy or resist it. For this end, they sought to join it in interest with themselves; to bind it to the body politic of which they and it were part; to legalize and nationalize it, by regulating its territorial property, and giving it a fixed position in the constitution. They hoped thereby to break off its alliance with external politics, to moderate and tame it, reclaiming it to settled courses from the wild rovings of its native breeding. And, in general, their hopes have been fulfilled; so much of secularity of spirit and regularity of action having, in well-ordered countries, been imparted to the Church, as to make it nearly a mere civil corporation in a religious dress.

Such, in few words, seems to me the principle and object of the Church polity of modern States. It arose from a corrupted condition of religion; a condition in which its officers and professors were employing their physical force (not perhaps in the rude way of blows or burning, but by producing political inconvenience and danger,) for the end of controlling political legislation and government. As its force was the cause why the Church got her political authority, so her degree of authority has in each country been regulated by its amount. And the main object of clothing it with such authority has been to confine the action of Churchmen within certain bounds, and especially to secure that they should not separate themselves from the other political power in the country, and pursue any corporate, or any foreign, or unnational interest. If these observations are well founded, we see in these relations of the Church to the State, another exemplification of the law, that, in the body politic, power first and authority ultimately follows command over physical force directed to political objects.

3. Nothing has been more puzzling to certain theorists, who regard the title to political authority as founded exclusively on moral reasons, than to reconcile with their notion, the restriction which the common sense and feeling of men demand, of such authority to the male sex in its state of manhood. In particular, the exclusion of the female sex, that is, of just one-half of the human race, has greatly perplexed all who, instead of inquiring where power resides really and efficiently, have sought to

determine from assumed abstract principles where it ought to be. Holding that the payment of taxes, or amenability to the law, or the possession of property, or some other such circumstance, entitles to political authority, they insist that all constitutions shall be built upon that basis; some persons even declaring no one to be legitimate that is not so settled, and no laws binding respecting which all possessing their imaginary title, have not been consulted either in person or through their representatives.

These are opinions which may at times be dangerous, and are almost always unsound. Generally speaking, the validity of laws is determined simply by their quality as moral or immoral; not by the tenure by which their author got or holds the post of lawgiver. An exception exists, when the governors are so obnoxious as to be a source of irritation, turbulence, and confusion; in which case a taint will run through all their proceedings, and it may become the duty of a citizen to reject all laws, good or bad, from their hands. But not to wander into a general speculation regarding what constitutes lawful government, I would venture only to assert that a *power* to govern, that is, to execute law, is absolutely essential to Governments collectively, and to Governors individually. Whoever has not such power, is disabled by nature for the office. He cannot, therefore, have any moral title to the post of Sovereign. Whether the converse of the proposition be true, and the moral title lies with those having the necessary power, and the will to employ it politically, is a question which need not be discussed.

But assuming the necessity of physical power to the office of governing, we have a reason for the restriction of political rights to the male sex in its state of manhood. Observe the condition of the domestic society or family. The children belonging to it, whether male or female, do not possess, prior to the age of maturity, the requisite natural force for efficient agents in the political world. Their weight, into whichever scale it were thrown, would not affect the balance. Besides, any force that may belong to them, they have naturally neither the intelligence nor the disposition to exert politically, so that, in ordinary circumstances, it never comes into play. Still farther, mankind, conforming in this respect to the evident design of nature, have agreed in holding children to be under the dominion of their parents for the ends of education; and as these would be defeated by their coming forth as independent political agents, public opinion reprobates and forbids it. Up to manhood, therefore, children, in relation to the body politic, very much resemble the slaves of a democratic community, with this difference, that while the condition of the latter is false, wrongous, and miserable, that of the former is natural, just, and happy.

From this condition, however, children of the male sex are destined by nature to emerge. But for the rest, they, as women, keep through life the condition of children morally and physically. *Morally*, because if it be admitted, and it cannot well be denied, that mankind were designed to be collected in families as the primary societies, it will follow that no one

may fitly hold a position in general society inconsistent with his proper position at home. But in the family the woman is subordinate to the man. Over its fortunes as a society he possesses a command nearly absolute, and the entire disposal of its lot. It is the destiny of the woman to pass from the dominion of her father under that of her husband; and as in her earlier years the former, so in her maturer years the latter, may be considered as in some sense her master; having the sole authority to speak and act for the family, of which she is a member, and within whose enclosure her life is chiefly spent, more especially in regard to all its relations with external society. The subordination thus established in these primary and fundamental associations, would be disturbed, if not altogether overturned, if in the councils of the body politic women were allowed to appear and have an equal voice with man. But if this general moral reason for the political disabilities of the female sex should be deemed of questionable force, there remains her physical unfitness for the business of politics. Nature has not made woman a political creature. She carries her disability in her constitution. She is wanting in the physical power, and with that, in the mental disposition and capacity. Her natural incapacity for such operations of political society, as the active execution of its function, for instance, the forcible repression of criminals, the forcible exaction of reparation, the public defence in war, must be at once confessed. Her disqualification for the part of legislator, is no less real, if it be true that the ultimate resolution of legislative assemblies

is in reality nothing but the will of the greatest physical power, and if the constitutional machinery whereby bodies politic consult the sense of their members before framing and publishing their laws, is useful and rational only in so far as it accurately collects the suffrages of the power in political action. Out of this preliminary enumeration and weighing of votes, woman must always be thrown. Gifted she undoubtedly is with physical strength suited to her needs as an industrial agent, and hence she is entitled to be recognised as equally capable with man of holding property, and acquiring all the rights as well as fulfilling all the duties of a labourer. Able also she is, by an abuse of her force, in moments of excitation, to injure persons and things about her, and hence she is amenable to the coercive physical authority. But a steadily operating agent, either in physical aggression or in physical defence, she is not; and in all the contests where force is the arbiter, her ordinary and true place is at home abiding the result. The difference between the sexes was well marked in the cry which opened in Warsaw the last great struggle for Polish independence—"Men to arms, Women to your homes." And it is touchingly pourtrayed in the manners of a savage tribe that I have somewhere read of, of which the women await the issue of the battle waged by their warrior husbands, seated on the ground, and with their heads bowed between their knees.

This physical disqualification cannot but extend to the intellect and the feelings, and produce something like a mental inability. He who reflects that

the business of lawgivers in political society is to fix the times, circumstances, and manner in which physical power should act, whether as a restrainer, or a compeller, cannot but conclude that something like a masculine experience is an indispensable qualification. A woman, acting in this matter, would resemble a swordsman handling a weapon not his own, or David clothed in the unmanageable armour of Saul. All that sense of the nature and operation of force, of what it may do and what it may not, which a man has by instinct, or acquires in the rough course of manly education, is utterly wanting in the woman, who would make the sword, had she its command, follow instantly the promptings of her quick, passionate, untaught, and in these matters, unteachable intellect. Most high and honourable is the place held by woman in the family, in the Church, and in society at large ; capable of many important rights and functions, and bound by many lofty responsibilities. Nevertheless her sphere (like that of man himself) has its limits ; and to the body politic in particular, in its strictly deliberative and legislative, no less than in its executive operations, (both of which are equally coercive in their nature,) her relation must always be that of a subject or dependant, never of a true member. Nor would this relation have ever been reckoned unworthy, but for the undue height to which this institute has been raised. Her exclusion from political power has therefore been the general custom of nations. The exceptions of those countries where women are seen exercising high political authority, only confirm the general princi-

ple by the peculiar reason which occasions them. The cause is that, aristocratic or monarchical institutions, opinions and manners, have there clothed particular women with the control of the physical power of a multitude of men. It is for such a reason only that women have anywhere been allowed to wield political authority; at least, never as due to themselves, or otherwise than as occupying a very artificial position. And this unanimous judgment of mankind, denying them any personal title to public power, as it is agreeable to the normal law of the body politic, so, we doubt not, it will not hereafter, as it has never heretofore, been complained of by any woman aware of the true character of political society, and consulting only the instincts of her womanly nature.

4. We have already made reference to a fact which has greatly surprised many political speculators—the existence of slaves in a nation governed by a democracy. The surprise has been caused by the state of democracy being considered as identical with a state of liberty, which is not true, except in a particular sense. The member of a democracy is a freeman in this sense, that he possesses his just proportion of the supreme power. He is one of the sovereigns; and of those who compose with himself the sovereign body, none possesses more of the sovereignty than he. They are all sovereigns and all equal, because each is single and individual. The democratic man, therefore, is imbued with the spirit of liberty, in so far as he rejects for himself any station implying political inferiority. But while asserting a position of sovereignty and of equality in

relation to his fellow-sharers of the sovereign power in his community, he has no objection to hold relations of a different character with other persons, whether domestic or foreign, provided they are not of the body of political agents to which he belongs. He has no objections, for example, to hold men in slavery; because the subordination to himself, or to his fellow-citizens, of men who are (like slaves) without his sphere of political action, causes no disturbance of the law of equality which reigns within it. That being preserved, the member of a democratic community may be a master of slaves, without violating the principle of its constitution. But though tolerant of slavery, or the state in which men are reduced to mere things, he cannot tolerate any form of feudality, or that state in which men are the political vassals or dependants of other men; because such vassalage implies political inequality; and if it existed within his community, he would feel himself to be politically inferior to some of his fellow-citizens. To every form of vassalage, therefore, and to all customs or social arrangements which produce or cause vassalage, the genuine democrat must be animated with inveterate hostility. He insists on equality, and as true political equality can be produced and preserved only by reducing all his co-agents in the body politic to a condition of individuality and independence, he demands the social arrangements of which these are the fruits. This hostility to political vassaldom is agreeable to just ideas of liberty, and of the dignity of man. But in a democratic community, it does not need this noble origin. It may there be generated, simply by the sense of self-

interest, by the ambition inspired by the situation in which men find themselves, and having no higher view than their personal honour and power. Nor is it uncharitable to believe that it is to this lower inspiration, rather than to high moral principle, that the antagonism to aristocratic rule (often mistaken for love of liberty) owes its prevalence among democratic communities, and the force and constancy with which it acts there. Personal interest alone would prompt the member of such a community to reduce all men within the compass of his body politic to a like measure of power with himself. For this reason, the democratic principle differs from the aristocratic and monarchic. These are not of an exclusive or intolerant character; that is, they do not require that the sovereignty of the nation should be wholly in their own hands. Monarchs and nobles will share it friendly with each other, and will even take (if expediency dictates) democratic corporations into partnership with them. But the democratic principle is intolerant; its nature will not be satisfied with anything short of the sole and undivided sovereignty. Accordingly, no sooner has it established itself within a community, than it seeks to diffuse itself and make itself universal. Nor is this propagating and aggressive tendency owing merely to the personal ambition of its disciples, rendering them intolerant of political superiors. The diffusion of the democratic condition of society is furthered by the spread of civilisation, which, by securing to personal industry the rewards of subsistence and wealth, frees men from the dependence on the powerful necessary in unruly times, and

puts them into circumstances that incline them to imbibe the democratic temperament and principle. To the influence of these causes, there is added that of reason and philosophy, which pronounce the democratic allocation of power to be the normal condition of man as a political being—the condition demanded for the full development of his capacities and the exercise of his noblest functions. These several influences, of which the force is daily augmenting in the civilized portion of the globe, will accomplish the general conversion of its nations into democracies. This revolution seems (if recent signs are to be trusted) not far distant: at all events, it is certain, unless the career of society is to be arrested and turned back. Some deprecate the threatened change, and think to prevent it by arguments against the expediency of the democratic rule. Others, again, desire it, and think to hasten it by using the like means in its favour. But the efforts of neither will sensibly affect the event. Considerations of general utility are not the power by which Providence moves society to adopt her great natural institutions; but impulses within or attractions without, which affect each individual, and impel men in multitudes to act, each for his personal interest, a simultaneous part, of which general effects, far above their intention or thought, are the result. In such affairs of great general concernment, man resembles somewhat the coral insect of the Southern Ocean, whose labours, though prompted and guided only by the blind and narrow instincts of the tiny workers, do yet build up a firm foundation for mighty continents.

CHAPTER VII.

THE GOVERNMENT OF THE STATE—*continued.*

Summary of doctrine regarding the government of the State.—Relation of the law of government to the function of the State.—Adaptation of the one to the other.—Illustrations.—Conclusion.

THE general result of the observations in the preceding Chapter was, that by the laws which prevail over the political relations of mankind, supreme power in the body politic is attached to those members of it who possess coercive physical power, and whose power is in political action. This law is always in operation; but there is a variance in the persons whom it invests with political sovereignty, according to the stage of social progress in which each nation happens to be. Sometimes it bestows the sovereignty on one single individual; sometimes it bestows it upon a number of persons, of whom some few are chiefs, and the rest are their subordinates; sometimes it bestows it on a multitude, all of whom are equals in power and authority; and sometimes it bestows it on a complex combination of persons, unequal in authority, in obedience to a corresponding state of social relations existing in the nation.

The explanations and illustrations already given will suffice, we trust, for our immediate purpose, which was to present, not so much a conclusive demonstration of the truth of the doctrine, as such a distinct exposition of it as might enable our readers to compare it with the phenomena of the political world. If the principle or law which has been announced agrees with the phenomena, and furnishes a plausible solution of the difficulties which they present to observers, we shall be fairly entitled to presume it to be true. But if it fails in this respect, and leaves the transactions of the political world as unintelligible and confused, and apparently lawless, as it found them, it must be relinquished as useless, or rather rejected as false. For in this, as in every other department of philosophy, our ideas of the operating principles and laws must be gathered from, and must be consonant with, the whole facts and appearances which they profess to explain, and not deduced from a few phenomena capriciously selected, and made the exclusive object of our contemplation, and only basis of our reasonings.

On the same plan, we are desirous, before concluding this treatise, to suggest to the reader another test by which the soundness of our theory may be tried. The body politic has appeared, from the point from which we have examined it, to be a production of Nature rather than a work of art. It is fashioned by man, no doubt; but in fashioning it, man works under the influence of general causes—of interests, impulses, and ideas operating throughout multitudinous societies, not in obedience to suggestions origi-

nating in the opinions and views either of individuals or of any small number of leading men.

Of this grand natural institution we have endeavoured to ascertain the nature, and have ascribed to it a specific function, and a specific power for executing it. We now remark, that an adaptation of means to ends—an aptitude of instruments for what they have to do—is a characteristic of the works of nature. It is not perhaps always possible to discover it; and it has often been fancied to be where it was not. Often, however, it may be clearly traced, and it is always pleasant and rational to make an attempt to discern it. If our account of the body politic be correct, we may expect to find this harmony between the function ascribed to it and its acting power; and perhaps the following hints may satisfy the reader that this province of Nature is not destitute of this characteristic testimony to the wisdom and skill of its great Author and Governor.

In this inquiry, whether the body politic possesses any natural aptitude for its proper function, we are entitled to assume that the institution is in a state of maturity or perfection. Now, in regard to its government, we have seen that the body politic is in a normal condition, (to use a convenient phrase,) when every person possessing coercive power has become an independent political agent; in other words, when the national society has been, so to speak, pulverized into political individuality, and become thoroughly democratic in its character. Let us, therefore, suppose such a community—a community sufficiently numerous to be called a nation, and of which every

one of the whole adult male population is independently and habitually exercising political power—and let us inquire whether there is any fitness in a body so moved and governed for the business which it has to do.

1. The first work of a body politic is to bring under rule to the common or public will the whole physical power of the coercive agents within its limits. This is effected by every man renouncing the right and the habit of independent action in affairs of coercion, and putting his power for such uses under the command of the community. But this abnegation of separate action, and this surrender of their power to the rule of the public will, on the part of the men composing a nation, are at no time so universal, so complete, and so habitual, as when they have come into the democratic condition. As each man has then only his single power under his own control, the gain from a lawless use of power will be at the minimum, the dangers and evils at their maximum. At the same time, the organization of power by which those evils are avoided, and the advantages of united action secured, requires in that condition the personal consent of individuals to construct and maintain it. The political union will therefore then be valued at its highest estimate, and it will then rest upon a broader and firmer basis than at any other period, namely, the intelligent concurrence of the whole, or all but the whole, members of the community. Then, also, the active power of a community will be at its height. Owing to the sovereignty being lodged in a free multitude, some contention and some tardiness will mark

the process by which the public will is formed and announced. But when the process is gone through, the public resolution, finally embodied in the shape of a law or order of State, will command the greatest possible amount of respect and obedience, because it must be in the nearest possible accordance with the prevailing opinions and wishes.

2. The various institutions by which a body politic executes its offices are likely, in the democratic more than in any other condition of society, to attain the greatest possible simplicity, aptitude, and efficiency. No difficulty or dispute can then arise respecting the possession of sovereign authority, because no man will then have any pretensions to it except on a principle which binds him to share it with every other man by the rule of equality. Upon this rule, accordingly, the Constitution will then be constructed; and being so constructed, will infallibly serve its peculiar end. A similar aptitude will probably characterize the institutions by which the constitutional authorities execute the public business; for the sovereign power, under whose oversight they are formed, can have no interest in regard to its institutions, except that they should be at once efficient and inexpensive. It would be rash to affirm that the institutions necessary to govern a civilized people will ever be either unburdensome or uncomplex; or, to repeat the opinion of Milton, that the bare trappings of a monarchy might set up a commonwealth. But there will be, then, this consolation, that the machinery of government, however complicated and however burdensome, will be necessary, will not originate in any sinister inter-

est, or be dedicated to the aggrandizement of families or parties, but will be vindicated by its direct subserviency to the public welfare.

3. Pursuing our examination, we may discover in the allocation of political power, consequent on society being democratic, the greatest possible security for a State applying itself to none but its proper ends, and with the greatest attainable success. Thus, with respect to territory, of which States are proprietors, we have seen that a democratic allocation of power is hostile to the possession of large estates by private persons. On the contrary, it demands that the land shall be parcelled in comparatively small portions among its inhabitants, because it will not suffer the political domination of one man over others attendant upon great properties. But this minute subdivision of the land is just the plan best fitted for securing the largest amount of its industrial benefits for the use of man. The democratic influence, therefore, in impelling a State to break down large estates in order to keep men politically equal, unconsciously directs it to the very policy which an enlightened economy would dictate—a happy characteristic of this species of political society, and one with which, it may boast, every other species militates in a greater or less degree.

4. Adverting to the office of the State in regard to physical force, we saw that its duty was to apply it to its just coercive uses. Hence it becomes charged with the administration of justice, of all functions the most dignified and useful. In so far as concerns questions between private persons, it executes this

function by means of tribunals, presided over by men skilled in the science of justice, who, developing its principles as cases arise, at once effect an equitable settlement of particular disputes, and construct for the guidance of the whole citizens, a rational law of civil life. To qualify these functionaries for this high task, it is necessary that they should be placed in a situation removed from the disturbing influences of fear or favour, and in which interest and honour are identified with an enlightened and diligent discharge of duty. But in no condition so much as in the democratic is the State disposed and fitted to constitute the judicial establishment on the proper footing. The sovereign power, consisting as it does of the whole members of the community, has then no interest in the perversion of justice in any individual case, or in the adoption of any general rules adverse to equity and liberty. It is, at the same time, at no period so incapable, or so conscious of its own incapacity, and of the incapacity of its organs—the legislature and the executive, to administer justice with the intelligence, calmness, patience, and impartiality which the duty requires. In States less happily constituted, the sovereign is loath to part with the power comprehended in the judicial function; and accordingly, while in some it is held in their own hands, in others, though they vest it ostensibly in separate officers, they yet influence and control it by withholding from them full liberty and independence. But in the democratic condition, the interest of the sovereign power, which is identical in this respect with the permanent interest of every private man,

demands not only that the judicial function should be in peculiar officers, but that these should enjoy the largest measure of freedom and independence. The whole feeling of the society tends to the isolation of the judiciary from all corrupting influence, and its elevation to dignity and power. So, accordingly, it is found, in point of fact. Open courts, independent judges, trial by jury, and all the other requisites to a fair dispensation of justice, are concomitants of political freedom. At the same time, reverence for Law deepens in men's minds, and controls the actions of the highest and the lowest. We may witness the sublime result in the experience of the great Democracy of the Western Continent. In the United States of America, the Supreme Court of Justice has been charged with the extraordinary duty of keeping the General Legislature itself within the limits of the constitution. And when it has exercised this duty, by denying effect to unconstitutional laws passed by the Congress, its decrees have received an obedience as prompt and implicit as if they had been directed against the most insignificant citizen.

5. There are other applications of coercive power which, because they relate to rights and interests affecting the State or community, require to be regulated by acts of legislature. Respecting these, what is required for good government is, that the legislature should readily act when necessary, and act with impartiality. For this the democratic condition of society furnishes every security. Comprehending persons connected with every social interest in the community, the sovereign body will be moved by

them to make such laws for it as equity dictates. And it will obey the impulse; for so long as nothing encroaching or aggrandizing is attempted, there will be no reason for any other interest to move in opposition. But whenever the line of equity is crossed, an obstacle to public action must arise, because any unjust privilege conferred on one interest involves an injury to every other, and would therefore be sure to encounter general opposition. The great folly in this branch of public affairs in past times has been, that the masters of the Government, often from basely selfish motives, sometimes from false ideas of public utility, have interfered with the industrial freedom of their subjects—fostering one kind of industry and discouraging another. This policy, unjust and hurtful as it is, may be expected to cease under the sovereign body in the democratic condition; not because it will be much wiser than before, or be less disposed to the old error, but because it will be incapacitated for committing it by the antagonist interests of the persons composing it. These will so operate as in general to bring the State to a stand in reference to all projects, respecting which it is not clear that they will serve many persons and injure none. Projects of a different character will excite an internal conflict, ending probably either in their being rejected, or in their receiving no efficient support; and thus the State will fall unwillingly into the very policy of inaction and non-interference in such cases, which, if it were wise, it would embrace on principle. Yet we are not to conclude that Government will have

little to do, or that its policy in regard to social affairs will be dictated by the doctrine of *laissez faire*, or letting things alone. On the contrary, as the governing power, when society is democratic, will be more sympathetic with society than before, and as it will have a higher (perhaps an arrogant) opinion of its prerogative, an increase rather than a diminution of attempts to regulate the affairs of its subjects may be predicted. But the character of its interferences will probably be altered. They will be more strictly limited to the maintenance of what is just to all—and, being just, is expedient. And the increase of interferences of this unobjectionable kind, will take place, because as men improve, while some affairs which law once regulated will be set free, others will be brought under its dominion, which have been left free, owing to the moral insensibility of society to the nicer distinctions and intricate ramifications of right, and the consequent want of power, as well as of disposition, in Government to adopt the measures necessary to give effect to them.

6. Among the affairs which the nature of the sovereign body, when society has become democratic, will compel Government either to refrain from altogether, or very much to alter the character of its interference with, we may expect to find those of religion, and generally whatever has for its object the formation and diffusion of opinion, scientific and moral. Inasmuch as all men will be interested in such matters, and impressed with their importance, there will probably be a more eager inclination than ever for legislative ac-

tion in their favour. And no doubt many efforts will be made, under the pressure of this impulse, to build up some unobjectionable and permanent system of national faith and morals. But they will fail; because the basis on which alone they could rest will now be entirely gone. They can be reared only upon the foundation of national uniformity of opinion and belief. And this, again, is found only where men are subject to some influence which suppresses the action of reason and proscribes all freedom of inquiry and thought. But this slavery of the intellect is necessarily unknown in the democratic condition of society, and, instead of it, men then universally cultivate the habit of independence and self-reliance in the formation of opinion. The result necessarily is, that, in place of the ancient uniformity, society will then present in this department an aspect of variety which many will mistake for dissension and opposition. But while this advanced stage of society will differ from the earlier by the multiplication of sects and schisms, there will probably be little alteration in the temperament of men, in the bigotry with which opinions are maintained, and the fervour with which they are disseminated. I doubt not that the same propensity to domineer over the mind and conscience of one another, which men have indulged so largely in past time, will animate them as powerfully in the future. But it will now be innocuous, because it will not possess that command over the public power by which, in old times, it worked its mischief. The sovereign body will be composed of partizans of every different

opinion ; and opinions will be nearly as numerous as individuals ; and as every one will be hostile to all opinions but his own, any united action to favour particular doctrines or systems will be impracticable.

In this way, a policy liberating the intellect of the subject not only from all State influence of a restraining and depressing nature, but from all devices which, professing to stimulate and guide, have generally enfeebled and perverted it, will be imposed on men by their inability to agree on any other, even though they should not perceive it to be wise. In human affairs the happiest results often proceed from this humble cause—being the effect, not of our prudence, but of our weaknesses, our faults, or our errors. These prevent us from accomplishing projects on which our hearts were set ; we are mortified and mourn over the failure as a calamity, but higher wisdom pronounces the actual issue to be good, and shows that what we missed would have been evil. And yet I do not know that that substitution of diversity of opinion for the old uniformity, from which we anticipate the miscarriage of all public institutions for guiding and controlling thought, ought to be numbered among the ills or defects of our nature. Perhaps, indeed, such variety of opinion is to be lamented, as proving that men have failed to apprehend the truths for which they are searching. But it is at the same time a cheering token that they have attained the moral condition congenial to their nature—that they have thrown off the dominion of mere authority, custom, and prejudice—that they

have ascended from the prostration of mental slavery to that eminence of freedom for which every man was designed, and where, in all that concerns truth and duty, man rejects every master but his reason and God.

THE END.

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